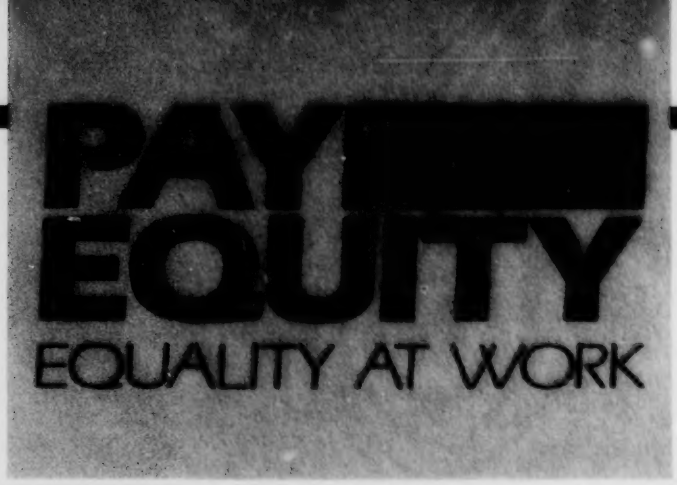

PAY EQUITY IN MANITOBA
A Discussion Paper

November 1988

Manitoba
Labour
Pay Equity
Bureau

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Manitoba

Minister of Labour

Winnipeg, Manitoba, CANADA
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November 1988

The Manitoba Pay Equity Act, passed in 1985, was the country's first pro-active pay equity legislation. It was one of those rare pieces of legislation to receive unanimous support from all parties of the Legislature.

As Minister of Labour, and Minister responsible for The Pay Equity Act, I am satisfied with our progress to date. But, now that the process is complete in the Manitoba Civil Service, Crown corporations, 23 health care facilities and 4 universities, it is time for assessment. It is time to look back at The Pay Equity Act to determine its impact on employers and employees. It is also time to move on.

To this end, I have invited representatives from key employer and employee groups in funded government agencies, school divisions, municipalities and the private sector, as well as the women's community to participate in pay equity consultations.

This discussion paper will provide a focus for the consultations by raising specific implementation issues and asking participants to comment on how these issues would affect their sector, organization, and members.

I would like to express my gratitude in advance for the co-operation of the participants, whose knowledge and experience will contribute substantially to a greater understanding of the factors affecting the future of pay equity in Manitoba.

Sincerely,

E Connery

Ed Connery
Minister

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A DISCUSSION PAPER

November 1988

Manitoba Labour
Pay Equity Bureau

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I. INTRODUCTION

This discussion paper is designed to assist the parties involved in consultations to focus on key implementation issues that need to be addressed for the development of effective, workable pay equity models.

Manitoba's pay equity experience grows out of the 1985 Pay Equity Act. While the Act provides the reference point for this paper, initiatives in other Canadian jurisdictions are also explored. The focus on Manitoba's Act is not to suggest that provisions of The Pay Equity Act would necessarily be incorporated into future pay equity efforts; that future efforts would necessarily be based on our legislated model; or that the current model will be rejected as future plans are developed. Further, this paper does not purport to answer the questions it raises. The intent is to generate consideration of the issues as they pertain to the reader's workplace experience.

II. BACKGROUND

THE CONCEPT OF PAY EQUITY

Pay equity means equal pay for work of equal value. It is based on the principle that wages should reflect the value of the job, regardless of whether the job is being performed by a woman or a man.

Labour laws across Canada, including Manitoba's Employment Standards Act, require that men and women be paid the same if they are doing the same work; this is commonly known as equal pay for equal work.

Pay equity goes beyond the idea of equal pay for equal work. It recognizes that different jobs in the same establishment may have equal value to the employer and therefore deserve equal pay. But, historically, work traditionally done by women has been undervalued and underpaid. Thus, pay equity involves the comparing of jobs that are predominantly done by women with those predominantly done by men. The skill, effort, responsibility and working conditions of the jobs are evaluated and compared. If a female-dominated job is found to be of equal value to that of a male-dominated one, and the pay is lower in the "women's job", then that female-dominated job is entitled to receive pay equity wage adjustments. Pay equity laws in Canada do not allow the lowering of male salaries in order to implement pay equity.

PAY EQUITY IN MANITOBA

In 1985 The Pay Equity Act was passed unanimously by the Manitoba Legislature. This legislation covers part of the provincial public sector, including the civil service, Crown entities, and 27 external agencies comprising 23 of the larger health care facilities and the 4 universities. (See Appendix A for a listing of the entities). These organizations employ approximately 56,000 Manitobans, or about 11.4% of the employed labour force.

Manitoba's Pay Equity Act broke new ground in Canada. The principal elements of the Act were quite unique at the time of its passage:

1. Pro-active approach - This was the first time in Canada that onus was placed on the employer to correct gender-based discrimination in pay practices, instead of requiring an individual employee to come forward with a complaint.

2. Implementation through a negotiated process - Bargaining agents and/or employee representatives (representing non-unionized workers) and employers were required by the Act to negotiate the various steps of pay equity implementation.

3. Legislated timeframes - The Act outlined specific dates by which the various implementation steps were to be completed, agreement between the parties reached, and reports filed with the Pay Equity Bureau.

4. Phased-in and contained costs - Employers were not obligated to allocate more than 1% of the previous year's total payroll each year, and they had up to four years to phase-in wage adjustments.

5. Establishment of the Pay Equity Bureau - Under the legislation, representatives of management and labour are responsible for the implementation of pay equity within their organizations. The role of the Pay Equity Bureau is a supportive one. The Bureau assists, advises, and educates the parties; as well as monitors implementation.

The implementation process involved three phases:

I. The selection of a gender neutral job evaluation system and the male and female-dominated job classes to be evaluated in each organization.

II. Application of the job evaluation system to the classes to identify pay inequities, and negotiation of wage adjustments based on the evaluation.

III. Wage adjustment period of up to four years.

Manitoba's legislation has been used as a model by other jurisdictions. (For details of The Pay Equity Act's provisions refer to Appendix B).

Civil Service

The Manitoba Civil Service began its pay equity implementation on October 1, 1985. The first two phases were completed within the legislated timeframes. On September 29, 1987 the Manitoba government and the Manitoba Government Employees' Association (MGEA) signed their jointly negotiated Second Agreement. Results included:

i) Phasing-in of pay equity wage adjustments began September 26, 1987 and is to continue for a four-year period.

ii) The process provides wage adjustments for approximately 4,900 employees in female-dominated classes, encompassing about 52% of all female employees. Approximately 10% of these employees are men working in female-dominated job classes; they are also receiving adjustments.

iii) The wage adjustments average $1.87 per hour or an average increase of 15% over the four-year period.

iv) With this successful pay equity implementation in the civil service, the wage gap will be narrowed from 15% to 7% of men's wages for MGEA represented female employees. The remaining 7% difference is the result of other factors, such as length of service, and the fact that more men than women hold higher level positions. This portion of the wage gap can only be addressed by affirmative action policies.

v) The cost amounts to approximately $16 million, or 3.3% of total payroll over four years, which is within the 4% provided for in the legislation.

Crown Entities, Health Care Facilities and Universities

These organizations began their pay equity process on October 1, 1986 with First Agreement deadline September 30, 1987. All of the entities successfully negotiated their First Agreements and filed them with the Pay Equity Bureau within the legislated timeframe.

Implementation by these entities involves several features that distinguish it from the civil service experience:

- The 23 health care facilities and their 9 unions decided to industrially bargain one agreement for all the facilities covered.

- These organizations vary in size from a few employees, such as College universitaire de St. Boniface to several thousand, such as Manitoba Hydro.

- Multiple bargaining units were involved. For instance, the University of Manitoba had eight different unions jointly participating in pay equity negotiations. See Appendix C for a list of all the bargaining agents involved in implementation.

These entities have completed the second phase. The Pay Equity Bureau will be reviewing their filed agreements over the next few months.

This legislated model is one of various methods by which pay equity can be achieved. Several other approaches are being applied in Manitoba.

a) **Development Agreements** - Six of the Development Agreements signed by the Manitoba government since September 1986, contain pay equity clauses. Of the six participating companies, one has completed its pay equity implementation. The implementation of pay equity through clauses in Development Agreements incorporates elements of both voluntary implementation and contract compliance, in that the inclusion of pay equity is negotiable instead of mandatory, yet once the clause is negotiated in it becomes a condition of that Agreement.

b) **Voluntary Implementation** - The only voluntary implementation efforts that the Pay Equity Bureau is aware of in Manitoba, include Manitoba Museum of Man and Nature; Seven Oaks School Division; and Assiniboine South School Division. The Bureau has provided assistance and information to these parties, upon request, as well as to other organizations merely exploring the issue.

c) **Collective Agreements** - Over the years, some unions have raised pay equity as a collective bargaining issue with varying results. One of the first successful efforts in Manitoba to negotiate equal pay for work of equal value was made by the Canadian Union of Public Employees (CUPE) at the Health Sciences Centre during the 1970's. However, there are few general contracts in Manitoba which include pay equity provisions.

PAY EQUITY DEVELOPMENTS IN OTHER JURISDICTIONS

Pay equity is an issue which increasingly is being considered and addressed by different governments across Canada. There are various methods that can be used to implement pay equity. The two models that have been used most frequently in Canada are the complaint-based and the pro-active approaches.

Complaint Model

- In 1975 **Quebec** introduced "equal pay for work of equivalent value" in its Charter of Human Rights and Freedoms which applies to all workplaces under its jurisdiction.

- When the Canadian Human Rights Act was passed in 1978 it included an "equal value" provision, which also applies to all employers under federal jurisdiction.

- In April 1987, the **Yukon** passed a Human Rights Act containing an "equal pay for work of equal value" provision which applies to the civil service (including schools and colleges) municipalities, and municipal boards and commissions.

Pro-Active Model

- In 1985 **Manitoba** became the first jurisdiction in Canada to pass pro-active legislation.

- On January 1, 1988 **Ontario's** pay equity legislation for the public and private sectors came into effect. Wage adjustments for all of Ontario's public sector are to begin as of January 1, 1990, and for the private sector as of January 1, 1991. This process begins with companies of 500 or more employees and phases-in additional companies on the basis of size each subsequent year. Ontario's legislation applies to all private sector employees, except those with fewer than 10 employees.

Ontario decided on an integrated model (comprising pro-active and complaint-based elements) for its legislation. It includes two different pro-active approaches: i) jointly negotiated process in situations where employees are represented by bargaining agents; and ii) employer developed pay equity plans for groups of workers who are not unionized. A complaint mechanism is provided for two different sets of circumstances: i) as a means for allowing non-unionized workers input into pay equity plans for their workplace; and ii) as a general monitoring/enforcement provision in cases of contravention of the legislation.

- **Prince Edward Island's** legislation which covers all of the public sector (except municipalities), came into effect on October 1, 1988. Implementation in the civil service is to begin as of January 1, 1989, and in the Crowns, hospitals, school divisions, most external agencies, the university and the college, as of January 1, 1990.

- **Nova Scotia** recently passed legislation which came into force September 1, 1988. It requires pay equity implementation in its public sector, including the civil service, corrections, highways and some hospital workers (as of September 1, 1988) and to Crown corporations, school boards and remaining hospital workers (as of September 1, 1989).

  During third reading the government announced its intention to introduce legislation for the universities and municipalities in 1989. The government has also promised private sector pay equity legislation is to be brought forward no later than 1992.

- On September 8, 1988, the **New Brunswick** government announced its intention to introduce pay equity legislation for Part I of its civil service (which includes the civil service proper and a few additional agencies such as the New Brunswick Housing Corporation) during the 1989 legislative session. The legislation is to be based on a Report of

the Interdepartmental Committee on Pay Equity. This report also recommends that consideration be given to developing a schedule for phasing-in Parts II and III of their public service. There are no references to any other extension intentions.

- Other pro-active pay equity efforts are also underway:

  i) As of 1986, the **Equal Pay Unit** of **Labour Canada** has undertaken a pro-active effort to encourage larger employers to voluntarily comply with the equal value provisions of the Canadian Human Rights Act, instead of waiting for a complaint.

  ii) In 1987, the **Canadian Human Rights Commission** recommended to the federal government, amendment of the Canadian Human Rights Act to strengthen the equal pay for work of equal value provisions to reflect a pro-active approach, instead of the current complaint-based one.

  iii) The **Yukon** government is also attempting a pro-active approach within its complaint-based legislation, by encouraging employers to comply even if a complaint is not filed.

  iv) On April 8, 1988, the **Newfoundland** government announced its intention to establish pay equity in the public service, which includes the crowns, hospital workers and government departments. However, the government stated its preference to negotiate with employees, rather than legislate. On October 14, 1988, the government reached an agreement with five of its public service unions, to begin jointly negotiating pay equity.

  v) After two years of negotiation, the **federal Treasury Board** has reached an agreement with the federal public service unions to implement a pay equity plan. The results of the equal pay study are expected in late 1989.

- The negotiation of pay equity into a collective agreement is another pro-active method that has successfully been used by some unions in Canada.

Outside Canada

Minnesota is one of the most widely known example of a pro-active model, and it is from this model that Manitoba's approach was drawn. In 1982, Minnesota passed pay equity legislation covering its state employees (hospital workers, law enforcement officers, etc.) Then in 1984, it enacted a second law requiring schools, cities and counties to implement pay equity. As of December 1987, 79% of cities, 86% of counties and 100% of schools had reported implementation.

Many states in the United States, some European countries, and Australia all have pay equity programs (of some form) in place.

III. IMPLEMENTATION ISSUES

A. MODELS OF IMPLEMENTATION

Three major implementation models have evolved on which pay equity may be based:

1. **Complaint-based Model** - Where an individual employee or a group of employees must identify an alleged inequity and file a complaint, before pay equity implementation is triggered. Legislation in Quebec, the Yukon and at the federal level is based on this model.

2. **Pro-active Model** - Where the employer is required to establish an implementation plan to correct any gender-based wage discrimination in her/his establishment. This approach is also sometimes referred to as an "employer initiated" model, and may or may not involve a joint implementation effort with representatives of employees. For example, Ontario's legislation places the onus on employers to develop pay equity plans on behalf of their non-unionized employees. Manitoba, Ontario, Prince Edward Island, and Nova Scotia have all based their legislation on this model.

   A pro-active approach can also be used to accompany a complaint-based model. For instance, both the Yukon and federal governments are encouraging employers under their respective Acts to initiate pay equity implementation within their establishments in advance of any potential complaints that may be lodged.

3. **Integrated Model** - This approach is commonly defined as one which combines elements of both the pro-active and complaint-based models. The employer is initially required to implement pay equity, after which a complaint mechanism can be applied. Ontario and Prince Edward Island incorporate this approach into their Acts.

It should be clarified that there are two ways of applying a complaint-based approach to pay equity: a) as a model of implementation, e.g. Quebec; or b) as a monitoring/enforcement mechanism, e.g. Ontario. Based on this distinction, Ontario's and Prince Edward Island's legislation might be viewed as pro-active models that incorporate a complaint provision as monitoring and enforcement mechanism. An implementation model that used a pro-active approach for some employers (e.g. large) and a complaint-based approach for another (e.g. smaller employers) might qualify as an integrated model.

There are several **mechanisms** through which these models of pay equity implementation can be achieved:

- voluntary, or "employer self-selection";
- policy, e.g. Newfoundland government's announcement of its intention to negotiate pay equity with bargaining agents;
- contract compliance, whereby a business or organization providing goods and services to the government would be required to implement pay equity as a condition of its contract with the government; and
- regulation/legislation.

B. DEFINING ESTABLISHMENT

Defining establishment involves determining which employer(s) will be required to implement pay equity and the parameters of their organization(s). This is important because, as with all such legislation in Canada, pay equity comparisons and evaluations are limited to the same "establishment".

A pattern that has evolved in pay equity legislation has been to name the actual entity or group of entities: e.g., "Crown entities", rather than developing a specific definition of "establishment". Manitoba's Pay Equity Act cites the civil service, the Crown entities and the external agencies (which are defined as any organization that receives 50% or more of its annual revenue from the provincial government) as the employers responsible for implementing pay equity. However, the Act then goes further by specifically naming the 27 external agencies to be affected.

A similar approach is found in Prince Edward Island's, Nova Scotia's, and the Yukon's legislation. One reason for this technique has been to communicate as clearly as possible which employers are expected to comply. This approach is relatively effective as most public sector organizations tend to be self-contained. Nonetheless, there can be unique features even within public sector organizations. Defining the establishment by name may be a clearer process. For instance, in Manitoba there was the issue of several "juxtaposed" personal care homes, that had not been specifically named in The Pay Equity Act, but were administratively part of four of the hospitals under the Act. These personal care homes have been included in the pay equity process.

To date, the pay equity legislation that does include a specific definition of establishment is that which applies to the private sector: namely Ontario, Quebec and Canada. One reason is that the circumstances of entities in the private sector tend to be more complex, such as companies with several plants within a single city and/or throughout the province; or franchise and chain operations. Therefore the issue of specifically defining establishment for pay equity purposes does merit consideration, for both the broader public and private sectors.

The development of a specific definition of establishment can be based on various characteristics of an organization, such as its corporate, functional and geographic operations. If we work from the principle contained in Manitoba's Act that pay equity comparisons are to be limited to individual employers, then deciding what constitutes an establishment is critical in determining the scope for job comparison and the amount of total payroll potentially available for pay equity wage adjustments.

Corporate Definition

A corporate definition of establishment would apply to all operations within a given (legal) corporate entity. This approach would allow for a broad basis of comparison, as well as an opportunity for consistent application of pay equity across an organization's operations.[1] Such a definition might not adequately address issues such as holding companies; corporate restructuring; the selling of a business; franchises; chain operations; unincorporated employers; related agencies/organizations particularly in the public sector (e.g. Winnipeg Hydro vis-a-vis the City of Winnipeg, Housing Authorities, municipal libraries, etc.); and regional rates of pay. Obviously, the application of this or any other definition would be limited to those organizations that are within Manitoba's provincial jurisdiction. Quebec's legislation uses a corporate definition of establishment.

Functional Definition

A functional definition would mean that any group of employees subject to a "common set of personnel and compensation practices" would constitute an establishment for the purposes of pay equity. Such a definition might enable an employer and/or a bargaining agent to maintain the rationale on which various personnel and compensation practices might have originally been established, e.g. local labour

market or bargaining strength. However, such a functional approach might also preclude comparisons between workers in the same company if their employer's personnel and compensation practices differ based on various locations in the province; if they belong to different bargaining units; if some are unionized and others are not; and if some work full-time and others part-time.[2] It should be noted that the objective of pay equity in Manitoba, based on its definition in The Pay Equity Act, is to have employers establish a single compensation practice that applies equally to male and female employees who perform work of equal value.

Geographic Definition

With a geographic definition, a 'specified geographic boundary' would serve to demarcate the area within which job comparisons would be undertaken, e.g. town, local government district, rural municipality, health districts, etc. The application of a geographic definition might allow employers to pay their workers on the basis of local labour market wage rates and/or bargaining agents to negotiate wages that reflect the local cost of living.[3] Such a definition might also have a restrictive effect. For instance, if 'municipal'-based delineations were used then employers with branches/plants/offices in different cities could pay different wages in each such unit. This could end up being the case for private sector firms, as well as for social service agencies whose client catchment area goes beyond a 'municipality', e.g. Child and Family Services Agencies outside of Winnipeg.

Other Approaches

In defining establishment, other definitions could be created from variations or combinations of the above approaches. Ontario's Pay Equity Act uses a "geographic division" definition which includes features that provide some flexibility. For instance:

i) A group of employers who normally negotiate a collective agreement on an industrial or province wide basis can choose to continue this for the purposes of implementing pay equity, if the bargaining agent(s) concur.

ii) An employer may enlarge the definition to encompass more than one geographic division (with the agreement of and as it applies to bargaining agents, if any). An example is a company that has several plants, throughout Ontario, with a certain portion of its employees in each plant represented by the same union. In this case, the employer could decide, with the agreement of that union, to consider all the union's locals across all of its plants as one establishment, for the purposes of pay equity.

iii) Two or more municipalities within the same geographic division (e.g. towns within a county) can join together to develop a pay equity plan.[4] But if they should decide to persue point (ii) above then they must obtain the agreement of both unionized and non-unionized workers.[5]

iv) Municipalities, specifically, are not permitted to expand their definition of establishment beyond one geographic division.

v) No employer can subdivide a geographic division.

The evolution of a creative and flexible definition for establishment, and for other implementation issues may prove to be the preferred route for both employers and employees.

Associated Issues

There are several key "establishment" related issues that need to be highlighted and on which the Manitoba government would particularly appreciate input from the various key parties being consulted. They are as follows:

1. **Province/Industry-Wide Bargaining** - Employers and/or bargaining agents who normally bargain in this manner may wish to preserve this mechanism when addressing pay equity. These parties also may or may not wish to see such a provision clearly ensconced within any potential guidelines, policies, or legislation, as it does go beyond the parameters of employer/establishment specific pay equity comparisons. For instance, in Prince Edward Island one initial report on pay equity recommended that all employers who bargain on a province-wide basis, such as the hospitals, be defined as a single "establishment".[6] Although this particular recommendation was not ultimately included in PEI's legislation, another section of their Act does direct those public sector employers under the Act who normally conduct province-wide negotiations to use the same model for their pay equity negotiations.[7]

   Employers and/or bargaining agents who do not now normally engage in cross-establishment negotiations may wish to do so for the purposes of implementing pay equity, i.e. to share human and financial resources, as the 23 health care facilities in Manitoba chose to do.

   It should be noted that any of the three (corporate, functional and geographic) types of establishment definitions might be

problematic vis-a-vis province/industry-wide bargaining. Therefore, some special accommodation or provision may be necessary.

2. **Franchise and Chain Operations** - Should franchises be considered:
   i) as independent establishments;
   ii) under a corporate definition, included within the purview of 'related businesses'; or
   iii) under a functional definition, would they be treated as:
      a) autonomous, if personnel and compensation decisions are made locally by the franchisee (purchaser) or
      b) part of a larger establishment, if such decisions were made centrally by the franchiser (owner).

   Consideration also needs to be given to a situation where a single franchisee operates more than one such franchise. Would all of these units within one franchise's purview constitute one establishment? Should all stores in chain operation be defined as one establishment?[8]

3) **Female-dominated workplaces** - One of the more critical issues in defining establishment for the purposes of pay equity is that of predominantly female workplaces that lack male-dominated job classes with which to make the necessary comparisons.

   One of the most commonly cited examples is that of child care centres. Child care workers are a predominantely female occupation (about 95%) in Manitoba. Not only do most centres have few male workers, they do not have male-dominated job classes for comparisons. All pay equity legislation in Canada limits comparisons to single employer specific establishments. Existing models are not effective for the child care profession. Even though most child care centres in Manitoba would fall within

The Pay Equity Act's definition of "external agency", the legislation could not be applied to benefit them. The vast majority of child care centres are autonomous workplaces, i.e. most are not attached to or contained within other larger organizations that might provide a more diverse range of job groups for comparative purposes.

The only exception to this has been if a centre is administratively contained within a larger organization that would allow child care workers to be compared to other male-dominated job classes. This has been the case for three child care centres within entities currently under Manitoba's legislation: University of Manitoba, University of Winnipeg, and within the 23 health care facilities that bargained industrially. It should be added that the administrative relationship between such a centre and the larger organization it is located with, is critical in determining whether or not pay equity can be applied. For instance, Brandon University has a child care centre which was not included in that university's pay equity process because the centre is administratively autonomous. Even if there were to be an explosion of worksite centres, the ability to compare with male- dominated classes would depend on the relationship with the larger organization. The outstanding issue of centres that stand alone would not be resolved.

There is a need to examine if and how the situation of child care workers can be addressed. There may also be other examples of female-dominated workplaces, such as libraries and small businesses (particularly in smaller communities).[9] Some of the suggestions that emerged during Ontario's hearings on pay equity included "selected comparisons between establishments";[10] defining establishment to "coincide with an existing province-wide bargaining unit";[11] or using pay equity adjusted salary scales arrived at in another larger organization, on a proportional or "job match" basis.[12]

These suggestions would have major implications for employers, as they would a) involve cross-establishment comparisons thus altering the concept of internal value to the individual employer, and b) introduce the notion of proportional value which is quite different from that of equal value contained in pay equity. While Ontario's public and private sector Act did not resolve this issue, it does specifically state that the government is to conduct a study on female-dominated establishments that is to report and make recommendations before January 1, 1989.

Although this is a serious issue for undercompensated workers in female-dominated job classes within predominantly female workplaces, it is also a very complex one that requires careful and thoughtful examination. In considering this issue, it is important to keep in mind that there may be effective mechanisms other than pay equity legislation to address this concern. For instance, the Manitoba government's Salary Enhancement Grant, provides grants directly to child care centres for the sole purpose of enhancing the salaries of their qualified workers. Nonetheless, the issue of predominantly female workplaces raises the larger concern of the potential development of a two-tier wage system which could broaden the wage gap between women workers in female-dominated jobs in larger organizations and those in smaller ones.[13]

C. DEFINING EMPLOYEE

Another issue that contributes to determining the scope and effect of pay equity is the definition of "employee". There are various categories of employees. The following list incorporates the different types of employees that, for the purposes of inclusion or

exclusion, have been considered in various reports and by various jurisdictions studying pay equity: full-time; part-time/permanent part-time; casual; seasonal; temporary; trainees; bonafide students employed in the summer or in work experience/placement programs; independent contractors; persons hired to conduct a temporary inquiry; senior managerial personnel; patients and inmates of a provincial institution who help in that entity's work; and person(s) hired through a "job creation program or employment development program".[14]

Manitoba's Pay Equity Act does not contain an independent definition of employee. The only guidance that the Act provides in determining which employees are to considered for the pay equity process is a reference to the definition of employee contained in The Civil Service Act, for the purpose of determining which workers are to be included in the civil service implementation.

Not surprisingly the lack of an independent definition specifying which employees were to be included, resulted in the parties under the Act turning to the Pay Equity Bureau for policy interpretations. The positions taken by the Bureau have been based on previous interpretations that had emanated from Manitoba's Employment Standards Act, such as the inclusion of part-time and casual employees and the exclusion of contract workers.

All jurisdictions (except for the Yukon) that have passed pay equity legislation subsequent to Manitoba's, have decided to include an independent definition of employee in their Acts. During consultations it is worth exploring the benefits of an independent, specific definition of employee to provide the parties with a clear definition, and to minimize the need to seek interpretations outside their establishment. The parties may, however, prefer that the determination of "employee" be left to them. In such a case, who would decide in non-unionized establishments or for non-unionized employees within a workplace?

When the scope of pay equity and/or its phasing-in is tied to the size of an employer/establishment, such as in Ontario's private sector legislation, "definition of employee" relies on a formula for calculating the number of employees. Ontario's Act includes a formula, to determine the number of "employees" they have for pay equity purposes and the implementation timeframe that applies to them.

D. DEFINING GENDER DOMINANCE

Gender dominance is a concept that is central to the issue of pay equity. The vast majority of today's 'gender-dominated' occupations, be they female or male-dominated, are a product of historical patterns of occupational segregation. Pay equity's focus on gender dominance is an attempt to address the fact that a significant portion of the undervaluation and undercompensation of women's paid work exists simply because the work is done by women.

Many pay equity implementation efforts, whether in the form of policy, guidelines or legislation, use some definition of gender dominance. The most common reason for this is to provide some guidance to both employers and employees (whether bargaining agents or individuals with the right to file a complaint). A number of methods have been developed to define what constitutes a gender-dominated job class. They include a percentage domination by one gender within a job class; historical incumbency patterns and common gender sterotyping; and statistically based formulas.

In Manitoba's legislation, a job class must have a 70% domination level and at least 10 incumbents in order to be considered female or male-dominated. It also includes some flexibility regarding classes of 1-9 incumbents. Employers with 500 or more employees negotiate the inclusion of these smaller job classes. Employers with fewer than 500 employees were to be guided by regulations, but they were never developed.

Parties under legislation have indicated to the Pay Equity Bureau that deciding on the inclusion of classes of 1-9 incumbents was an issue for virtually all of the entities under the Act regardless of size. It became clear upon application of the Act that even in the larger entities (500+) there were 1-9 classes. In some entities, male-dominated classes had to be included to provide enough examples for comparison purposes. Negotiating which smaller classes would be included became quite complex and sensitive. Although entities reached agreement on inclusion of additional classes, many expressed a need for regulations or at least a clearer statement on the issue of 'less than 10's'.

Ontario and Prince Edward Island have broader and more flexible definitions of gender dominance in their Acts. Ontario sets the domination level for female-dominated job classes at 60% and for male-dominated ones at 70%, but does not require a minimum number of incumbents in order for a job class to be included in the process. Prince Edward Island's is the same except its domination level is 60% for predominantly male job classes as well. Both of these provinces go even further by stipulating that historical incumbency of a job class and gender stereotyping are also to be used in deciding which classes of jobs should be considered as gender-dominated. Ontario also gives employers and bargaining agents the right to negotiate in additional classes they agree are gender-dominated. In addition, its Pay Equity Commission staff and the Hearings Tribunal have the authority to decide that a particular job class is male or female-dominated.

Nova Scotia's legislation and that proposed by the New Brunswick government's Interdepartmental Committee on Pay Equity, prefer the requirement of a minimum of 10 incumbents in a job class before it is considered gender-dominated. New Brunswick's report also goes further, recommending that historical incumbency, gender stereotyping

and whether the class has been gender-dominated for the preceding ten years be used in deciding which classes of 1-9 incumbents to include for the purposes of the pay equity process.

Concerns Regarding Gender Dominance

Not all pay equity initiatives include and/or define the concept of gender dominance. When the equal pay for work of equal value provision, Section 11, was first passed as part of the Canadian Human Rights Act in 1978, it did not include a reference to gender dominance. In November 1986, however, the Commission issued guidelines which suggested a sliding scale for determining gender dominance based on the number of employees an employer has. "Gender dominance" is also not defined (or referred to) in Quebec's or the Yukon's legislation.

1. Too Restrictive

One of the primary criticisms levelled at gender dominance provisions is that they are too restrictive, both in terms of the domination levels set and (in the case of Manitoba and Nova Scotia) a minimum required number of incumbents in a job class.

One example that is often raised to illustrate the point is that only one of the federal equal value settlements, to date, would have succeeded under the domination levels legislated in Manitoba, Ontario and P.E.I.[15] On the other hand, criticisms of predefined threshold levels should also not be too arbitrary. Consideration should be given to what percentage of female workers a threshold captures. For instance, the "10/70" provision in Manitoba's Act encompassed 60% of all female workers in the civil service, and in New Brunswick this same formula is expected to cover 75% of women in the civil service.

One position that has occasionally been advanced is that, at a minimum, single incumbent classes should not be included in any pay equity comparisons because these classes could skew the results. The very existence of these single job classes is due to their unique functions in an organization. While this could be a valid explanation in some organizations, it cannot be automatically accepted. The proliferation of single incumbent, predominantly male job classes with unique and individual job titles is a common feature in many workplaces. Some of these classes may be crucial for establishing male pay practices.

Another issue is in smaller workplaces one or two individuals leaving and/or being replaced could alter male/female ratios. In case of fluctuations in gender predominance, consideration could be given to which gender predominated at the time that the pay scale was established. However, it might be difficult to establish at what point the hiring of females into an occupation influenced its pay level, ie. how do you calculate the timing of gender dominance?[16]

2. Too Arbitrary

The second major criticism of numerical cut-offs for determining gender dominance, namely arbitrary decisions, led several organizations during the Ontario consultations to recommend having employers and bargaining agents, if any, negotiate a definition that suits their particular circumstances. Some also suggested that this determination be subject to approval by the government's pay equity agency. One reason cited for this preference was to ensure maximum flexibility for the parties.[17] However, how such an approach would be applied in non-unionized workplaces needs to be considered. Would the employer decide, would a pay equity agency need to approve it, and/or would employees be entitled to bring forward complaints?

Other organizations argued that using a gender dominance approach was too arbitrary, and that instead an internal equity evaluation should be done for all jobs within an establishment. They felt that any such process would identify traditionally female-dominated jobs and any inequitable compensation practices that might be affecting them. One advocate of this approach stated that the "focus must remain on duties rather than the sex of the incumbent".[18]

Gender dominance has been used as a feature to distinguish pay equity from what is often referred to as an internal equity exercise, whereby all job classes in an organization are compared and evaluated using a gender-neutral job evaluation system.

E. DEFINING WAGES

Defining what constitutes "wages" or "pay" is fundamental to addressing both the possible existence and magnitude of pay inequities between male and female-dominated job classes.

Basically two categories of "wages" definitions have evolved:

i) 'wages and salaries only'; and

ii) 'total compensation'.

The 'wages and salaries only' approach takes the view that only the base salary or wage of an employee, and not the benefits, should be considered for pay equity purposes. Some of the positions advanced by those supporting this approach, include:[19]

a) Benefits should be considered separately from salaries, in order to see if benefits have been applied in a gender-discriminatory fashion. If that is found to be the case then, and only then, would benefits be included in the calculation of pay.

b) Only salaries should be included because that is the basis on which the wage gap is calculated.

c) "Total compensation packages are a matter of collective bargaining and it is entirely the union prerogative as to how the package is split into the various benefits."

d) Requiring the calculation of all benefits would make the process more onerous, complicated and costly for the employer.

To date, only Nova Scotia and Quebec define "pay" solely in terms of 'wages and salaries'. This approach is also recommended in New Brunswick's report on pay equity.

Pay equity legislation in Manitoba, Ontario, P.E.I., the Yukon and at the federal level includes a broader definition of wages/pay or a 'total compensation' approach. It should be noted here, that although Manitoba's Act uses the term "wages" it defines it as "...any form of remuneration payable or benefit provided...", and therefore should not be confused with the 'wages and salaries only' approach. The Canadian Human Rights Act provides a detailed listing of what it considers "wages" to encompass:

> "...salaries, commissions, vacation pay, dismissal wages, bonuses, reasonable value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans and any other advantage received directly or indirectly from the individual's employer".[20]

Various examples were cited in presentations to the Ontario consultations, as to why the inclusion of benefits is critical in accurately determining the degree of pay inequities between male and female-dominated job classes. Both the availability and the

distribution of various benefits can include gender bias. For instance, not all employees have equal access to pension plan participation and hence the employers' contribution towards their income security upon retirement.[21] Also, part-time workers, the vast majority of whom are women, do not always have access to all benefits.[22] Given that fewer women belong to unions, they often are not in a position to negotiate improved benefits packages with the employer.

There may be specific implications regarding how wages are defined, in the various sectors in Manitoba, such as piecework rates commonly used in the garment industry.

F. ALLOWABLE EXCEPTIONS

There may be circumstances where some female-dominated classes that have been found to be of 'equal value' to some male-dominated job classes but do not receive adjustments. The inclusion of some form of "allowable exceptions" across all Canadian jurisdictions is recognition of the non-gender-related factors that can influence pay rates and the occasional need to factor them into pay practices.

Manitoba's Act does not include a list of allowable exceptions. Instead it incorporates this concept within its definition of pay equity: "a compensation practice which is based primarily on the relative value of the work performed . . . " The interpretation and application of this term primarily is left up to the parties negotiating the wage adjustments.

Other jurisdictions have delineated a set of allowable exceptions in their legislation, including: seniority system; merit/performance appraisal system; labour skills shortage; regional rates of pay reflecting local labour market conditions; red-circled positions;

temporary training assignments; and bargaining strength. However, Ontario, P.E.I. and Nova Scotia all specify in their Acts, that their respective exceptions are only permissible, vis-a-vis pay equity, if the employer can demonstrate that they have been applied in a gender-neutral manner. The one exception not subjected to this gender-neutral test is the bargaining strength provision contained in Ontario's legislation, whereby after pay equity is achieved its results do not have to hold if an employer can demonstrate that the pay discrepancy is due to differences in bargaining strength between the male and female-dominated job classes in question.

Each approach to allowable exceptions has its advantages. Outlining specific categories of allowable exceptions informs all parties what factors may or may not be permissible, while the more general and non-descript nature of Manitoba's approach might allow more flexibility.

Some might suggest that no "allowable exceptions" should be permitted. However, valid and justifiable circumstances could exist, such as temporary labour market shortages, resulting in the need for some mechanism to allow such flexibility.

G. NEGOTIATED PROCESS

All pro-active pay equity legislation in Canada is based on a jointly negotiated process between employers and employees. The one variation is Ontario with its complaint-based role for non-unionized employees. The use of joint labour-management committees to implement pay equity has prompted some to refer to it as a "collectively bargained process". Thus, there is a need to distinguish between two common applications of the term "collective bargaining" as they pertain to pay equity implementation. One refers to pay equity in relation to the normative collective bargaining process that already exists in many workplaces, e.g. efforts to negotiate pay equity clauses into regular collective agreements; or the impact of legislated pay equity on existing and future collective

agreements. The other refers to the process by which pay equity can be implemented, within or outside of a pro-active legislated model. In fact, the negotiations of such joint pay equity committees are intentionally kept separate from normative collective bargaining. For the purposes of clarity this particular approach to achieving pay equity, which is the contained in Manitoba's Act, will be referred to in this discussion paper as a "negotiated process".

The joint negotiation of pay equity by representatives of both management and labour is a key principle of The Pay Equity Act. There were a number of factors that contributed to Manitoba's decision to proceed in this manner. First, Manitoba's rejection of a complaint-based model in favour of a pro-active one, brought with it a recognition of the critical contribution that unions had made in initiating the only complaints that had resulted in equal value settlements (Quebec and Federal). Second, most of the entities within the scope of legislation were highly unionized. A negotiated process recognized both the contribution that the employees and their representatives could make to the pay equity process and that unions would want to be involved in an initiative that would affect the compensation of their members.

All governments that have legislated pay equity subsequent to Manitoba have also chosen to use the negotiated process, with some varying provisions. It should be noted that the inclusion of this jointly negotiated process has in each jurisdiction accompanied a pro-active legislated model. The only exception to this is the Yukon's complaint-based legislation, which does not require but rather encourages employers and employees, unionized and/or non-unionized, to establish joint committees to implement pay equity in advance of any complaints being filed.

In fact the involvement of employees in pay equity implementation has also spread to the federal level. In 1985 federal Treasury Board established a joint union-management committee to begin negotiating equal pay for work of equal value with its thirteen public service unions. As well, the Equal Pay Unit of Labour Canada has been encouraging the private sector employers it approaches to include bargaining agents in any pay equity implementation efforts they may be considering. In addition, the Canadian Human Rights Commission's 1987 recommendations to the federal government regarding amending the Canadian Human Rights Act to make the "equal value" provisions pro-active, included a recognition of the importance of involving bargaining agents in the process. However, the Commission did not propose a mechanism for their participation, instead it recommended that consultations be held to determine the most effective approach.

Manitoba

Manitoba's Pay Equity Act provides that bargaining agents be equal partners in the negotiation and implementation of pay equity. It outlines their responsibilities as follows:

- "shall bargain in good faith making every reasonable effort to reach agreement" regarding each of the implementation steps: selecting a single gender-neutral job evaluation system (JES) and the gender-dominated job classes to be compared, applying the JES to the classes, and negotiating the resulting wage adjustments;
- shall file their own reports on the agreements reached and by the deadlines specified in the Act;
- if an agreement is not reached within the legislated timeframe they can refer the matter to the Labour Board, or to arbitration in the case of the civil service; and has a further referral right, via these mechanisms, if the employer should not implement the wage adjustments;

- would be parties to any arbitration or proceedings before the Labour Board; and
- are to be consulted regarding the designation of the Pay Equity Officer (note: does not require their agreement to the person ultimately selected).

Manitoba's legislation was also the first to establish the right of non-unionized employees in the universities, Crown entities and health care facilities to representation in the pay equity process through "employee representatives". The Act defines "employee representative" as

> "...a person elected in accordance with the regulations by persons who are employed by a Crown entity or external agency, and who are employees within the meaning of The Labour Relations Act but who have no bargaining agent;".

Employee representatives are accorded all the same rights and responsibilities in the pay equity process as bargaining agents, except for being consulted regarding the pay equity officer. The legislation provides that employee representatives are to be elected in accordance with the regulations. Although no such regulation was ever enacted (a guideline was issued instead) the entities proceeded with selecting these representatives. Although the process varied by entity, generally the selection involved informing non-unionized employees, through a memo or letter, of the Act's provisions in this regard, followed by meetings where they selected their employee representatives.

Both P.E.I. and Nova Scotia have included provisions in their Acts which give non-unionized employees the right to representation for the purposes of pay equity. The Yukon encourages it in its legislation and New Brunswick has recommended it in its Inter-departmental Report.

Pay Equity Officer

A feature of Manitoba's administrative structure that is unique is that of pay equity officers. The concept of a 'pay equity officer' stemmed from the establishment in the Act of the position of Pay Equity Commissioner. The Commissioner who was to serve as a regular Civil Service Commissioner, was also to be responsible for overseeing the implementation of pay equity in the civil service. Therefore, the Act provided that a pay equity officer could also be appointed to oversee negotiations and implementation in each of the entities.

Although the Act did not make a mandatory requirement of this, each entity decided to appoint a pay equity officer. Under a provision in the Act, Section 19(d) Cabinet is empowered through regulation to require a Crown entity or external agency to designate a pay equity officer. Such a regulation was never passed, instead guidelines were issued to the entities during the fall of 1986, encouraging them to appoint an officer as well as to consult with all bargaining agents regarding this appointment.

With the exception of health, most pay equity officers were selected from within the entity and their involvement in the pay equity process was in addition to their regular duties. Dependent on the size and complexity of the entity, some officers' pay equity responsibilities required full-time effort as deadlines approached. Health became an exception on several counts, stemming from their decision to negotiate industrially. The 23 health care employers and the 9 unions decided to hire one full-time pay equity officer for their sector.

It should be noted that the pay equity officers played an important role in both overseeing the effective implementation of pay equity in their respective entities and as liaison persons with the Pay Equity Bureau. This begs the question: should the pay equity officer be

retained for subsequent pay equity efforts. Any comments on ways in which such a function might be revised to more effectively meet both the needs of the parties and the objectives of the Act, would be appreciated. For instance, specifying that all the parties (including employee representatives) should endeavour to reach agreement on the designation of the pay equity officer, might facilitate the jointly negotiated process by ensuring that everyone has confidence in that person. The Act currently requires that bargaining agents, only, be consulted. This might be of particular importance in non-unionized establishments. What process might be used to reach such an agreement? Should the officer be selected from within the organization, or from outside of it to ensure greater neutrality and independence in the process?

Benefits of Employee Participation

The evolution of the equal participation of employees in implementing pay equity is a reflection of a growing recognition both in labour relations and in personnel policy that the involvement of workers in decision-making areas affecting them can result in:

- higher employee morale;
- more positive and effective management-labour relations gained as a result of better understanding and cooperation;
- a stronger sense of collective ownership whether in terms of a specific initiative undertaken or towards the business or organization as a whole; and
- the benefits accrued from tapping all of an organization's ideas, experiences and resources.

Pay equity is a complex and sensitive issue for both employees (because it affects their pay) and employer(s) (because it effects their costs). Drawing on the knowledge of employees and bargaining

agents, particularly with regards to the details and nuances of their perspectives on the various jobs being evaluated, can contribute positively to implementing pay equity. Joint involvement also serves to educate the participants regarding the issue. Many of the parties involved in implementation under Manitoba's Pay Equity Act would probably agree that the joint experience has brought a shared identification of the specific problems, perceived fairness in the process, creativity in the development of solutions, and commitment to the results.

Application to Diverse Workplace Situations

The model of a jointly negotiated process needs to be flexible enough to accommodate a range of bargaining agent/employee situations in the workplace (some of which could have particular implications for pay equity). These situations can be grouped into four broad categories:

(1) <u>One Bargaining Agent</u>

Employers and employees in establishments with one union may face a range of circumstances.

a) One union representing all of the employees, except for the commonly exempted management positions, as was the case at the Manitoba Liquor Control Commission.

b) One union representing a bargaining unit that is male-dominated and constitutes the majority of the workers in an establishment. For instance, it is not uncommon in some industries to find the predominantly male production workers to be unionized and the female office workers not. Manfor, one of the legislated entities falls within this category, but it has two such male-dominated unions.

c) One union representing different groups of workers within the same establishment. For example, in some Manitoba school divisions (treating a school division as one establishment), the Canadian Union of Public Employees represents both clerical workers (female-dominated) and custodial workers (male-dominated), each in separate locals/bargaining units. This delineation of bargaining unit boundaries on the basis of gender-dominated boundaries is quite common.

d) One union that represents similar groups of employees across different establishments, such as the Manitoba Teachers' Society or the International Association of Fire-fighters.

(2) Multiple Bargaining Agents

This can also result in a variety of negotiating situations, particularly with regards to pay equity.

(a) One (large) union that represents almost all employees and a few smaller unions. This is the case with the Manitoba Government Employees' Association which represents 92% of civil service employees while 2% belong to four professional associations (crown attorneys, legal aid lawyers, operating engineers and medical officers), and 4% are excluded employees. In terms of the process in the civil service, the MGEA negotiated with the employer. The other four bargaining agents did not participat throughout, but were kept informed of the process and involved in the rating of male job classes which they represented.

(b) The universities under Manitoba's Act each had three or more bargaining agents (including those representing faculty staff), with the University of Manitoba reaching a high of eight.

(3) Industry/Province-Wide Bargaining

Employers and unions who normally negotiate as part of a province/industry-wide wage setting process, is another situation to be considered vis-a-vis pay equity implementation. One example is the nurses and the hospital technicians whose negotiations result in provincial wage rates.

With regards to sectors that normally bargain collective agreements on a province/industry-wide basis, P.E.I. is the only jurisdiction that specifies in its legislation that any employers that usually negotiate wages in this manner shall apply the same model to their pay equity negotiations. Manitoba did not include such a provision in its Act, and instead the 23 health care facilities covered and their 9 unions chose to negotiate pay equity industrially. It is not the intent of pay equity initiatives to cause disruptions in an establishment, such as upsetting existing centralized wage setting structures, as long as they incorporate the principles of pay equity into their process.

(4) Non-Unionized Establishments

There are five small Crown entities currently under Manitoba's Act whose employees are not unionized. This becomes a larger and more sensitive issue with any consideration of pay equity beyond those entities currently under the legislation.

Profile of Sectors Not Under Manitoba's Act

A significant proportion of the workplaces not covered by The Pay Equity Act may not be unionized at all, or may be predominantly non-unionized i.e. may only have one small group of employees represented by a union. The following is a very general outline of the outstanding sectors:

- **Remaining "External Agencies"** - The majority of these government funded agencies are not unionized. It seems that very few belong to an umbrella organization that could coordinate pay equity on behalf of both the employer and the employees. Since many also have few employees they may not have resources and systems in place, particularly for pay equity purposes. The one exception among external agencies is the health care facilities, such as the hospitals and personal care homes, many having employees represented by unions, and some bargaining provincial wage rates centrally. These unions also have an umbrella organization, the Manitoba Council of Health Care Unions. Even so, not all employees in these outstanding health care facilities are unionized, and in some of the rural and smaller hospitals and personal care homes there are no bargaining units.

- **School Divisions** - All teachers in the province are represented by the Manitoba Teachers' Society. However, among non-teaching staff the level of unionization appears to vary markedly, from school divisions with many different bargaining agents/units, to those with only one or two, to those with no bargaining agents representing any of their non-teaching staff. Approximately two-thirds of all non-teaching staff in public schools are unionized.

- **Municipalities** - Once again, the distribution and nature of municipal employees that are unionized seems to vary considerably.

  i) There is a higher level of unionization in the large, urban centres, than in the smaller, rural and northern ones;
  ii) Certain unions represent the same groups of workers across different municipalities, such as the International Association of Firefighters which has bargaining units in four municipalities;
  iii) The majority of unions in municipalities represent male-dominated occupational groups, police officers, firefighters, public works employees, etc.; and
  iv) The majority of municipalities are small employers (fewer than 50 employees) and have no unionized workers.

- **Private Sector** - The breadth and diversity of establishments in the private sector adds another dimension to developing an effective and appropriate mechanism for employees to have input into a pay equity process.

  i) A lower level of unionization, on average, exists in the private sector than in the public;

  ii) The proportion of female workers who are unionized in the private is lower than in the labour force as a whole;

  iii) The unionization level varies between the various industrial sectors;

  iv) The industrial sectors in which most Manitoba women work are also among those with the lowest rates of unionization; and,

v) Although most of the larger establishments in the public sector are unionized or highly unionized, the same cannot always be said of the larger private sector firms. For instance, in 1985 of the approximately 34 largest companies in Manitoba within provincial jurisdiction, 17 or only half had some level of unionization.

Issues

One of the primary factors behind why the inclusion of a jointly negotiated model, with the involvement of non-unionized employee representatives, has worked to date is that it has been limited to the public sector which has a significantly higher level of unionization than the private sector. In fact, The Pay Equity Act was designed specifically for the purposes of being applied to the highly unionized Manitoba public sector.

The question then becomes if and how to apply the principle of employee participation in any type of pay equity process in non-unionized or predominantly non-unionized workplaces and sectors. The development of a workable mechanism for predominantly non-unionized establishments may be particularly critical to achieve pay equity, as the wage gap between unionized workplaces and non-unionized ones is wider.

As pay equity is considered beyond the entities currently under the Act, one of the most important implementation issues on which the government is seeking ideas from the parties is that of how and to what extent to structure the participation of employees, particularly in non-unionized workplaces.

Many employers and employees would agree that employees should be involved in any pay equity implementation effort in their workplace. The question then becomes the nature of their involvement in such a process. Non-unionized establishments represent quite a challenge for the model of a jointly negotiated process for implementing pay equity.

In developing an effective mechanism for employee participation, some common issues arise. Some of these have been addressed to varying degrees in existing pro-active legislation.

1) Should employees be involved in each implementation step, as equal participants in the decision-making process?

   All four jurisdictions with pro-active legislation have structured a jointly negotiated process as the means by which employees can be equal participants. Through the joint pay equity committees, the bargaining agent(s) are required to "bargain in good faith making every effort to reach agreement" with the employer at each stage of implementation. However, the final step, implementation of the actual wage adjustments, is solely the responsibility of the employer under all the Acts.

2) What role, if any, should non-unionized employees have in the pay equity process?

   Approaches vary on a provincial basis and may be different for public and private sector. In Manitoba, P.E.I. and Nova Scotia (New Brunswick also recommended this), non-unionized employees have a legislated right to representation in the pay equity process. In fact, these "employee representatives" as they are referred to in Manitoba and P.E.I., have the same role and responsibilities as the bargaining agents. This means that they

are full partners at the pay equity negotiating table. However, it should be remembered that the legislation in these provinces is restricted to the public sector.

Ontario has taken a different approach. It does not provide a formal role for non-unionized employees as part of a jointly negotiated process. Its Act separates unionized and non-unionized employees in terms of the pay equity process. Only bargaining agents are permitted to participate in negotiating pay equity. An employer can develop a separate pay plan for the non-unionized employees within the establishment, which must then be posted to give the employee the opportunity to raise any concerns with the employer. If not satisfied, the employee can file an objection with the Ontario Pay Equity Commission.

Examples may exist of other approaches, including jointly negotiated ones, that could be applied in non-unionized establishments. One reference point might be the model provided by the workplace safety and health committees in Manitoba, established through regulation.[23] Or there may be existing examples developed by and unique to certain Manitoba employers and their employees.

Some may feel that employees not represented by a bargaining agent should not have access to the benefits of organized employees. On the other hand, non-unionized employees may feel vulnerable as a result of any role they may play in pay equity negotiations. Ontario and P.E.I. include provisions that prohibit an employer, bargaining agent, employee or one of their representatives from intimidating or coercing anyone seeking to comply with their pay equity Acts. The inclusion of such a provision by these two jurisdictions might be a result of the fact that both have also integrated complaint mechanisms into their pay equity approaches.

3) What information should employees have access to, and how should this be structured, particularly in non-unionized establishments?

Many women's and labour groups who made presentations to the Ontario consultation process, saw access to information as critical in any pay equity process.[24] In terms of the jointly negotiated process, all four pro-active Acts require employers and bargaining agents to share any and all information that is relevant to implementing pay equity. The Ontario legislation tries to avoid one of the major criticisms of the complaint-based model (insufficient information on which to even bring forward a complaint), by listing precisely what information must be included in a posted pay equity plan, such as the job classes compared; a description of the gender-neutral job evaluation system used; the evaluation results; where allowable exceptions have been applied and why. One suggestion made during the Ontario consultations, was for employers to be required to file more comprehensive compensation information, with the Pay Equity Tribunal, that employees could then access.[25] On the other hand, many employer groups expressed concern about disclosing such detailed information, which they did not normally provide to employees and which they saw as the purview of management.[26] Therefore, it remains to be seen if the provision in Ontario's Act will serve to balance off these different concerns.

Suggestions are needed to determine how employees can be assisted in any pay equity process by the administrative agency of government. The Manitoba Pay Equity Bureau has a mandate to assist employers and employees. Balance and neutrality are crucial.

4) How should non-unionized employee representatives be selected?

How would these "employee representatives" be selected/elected for the purposes of pay equity, and which groups of employees would they represent? Although three jurisdictions provide the right for non-unionized employees to elect employee representatives, none specify a method for achieving this (even though Manitoba and Nova Scotia provide that such a process is to be outlined in regulations). The government would appreciate some suggestions regarding how such an approach might effectively be applied.

5) Should the parties negotiate simultaneously?

Another issue that can be approached in different ways is how negotiations are structured in multiple bargaining agent/unit establishments. For instance, even in a process that is jointly negotiated between an employer and the representatives of the employees, the employer could negotiate with each bargaining unit separately throughout the implementation or only at particular steps in the process.

In Manitoba, some entities had as many as eight or nine different bargaining agents plus a few employee representatives involved in pay equity negotiations. Although Manitoba's Act does not require that all bargaining agents and employee representatives negotiate simultaneously with the employer, the process evolved that way. It is an approach that has worked rather well. Some of the advantages to this approach are that: it might be a more efficient process than the employer pursuing separate sets of negotiations, especially in establishments with many bargaining units; it enables the different bargaining units to develop a better understanding of each others' perspectives regarding pay equity; and a common process might result in a

sense of collective ownership for the implementation and results. One of the disadvantages of such a collective approach is that one bargaining agent, who might disagree with one aspect of the process or results could prevent an agreement from being reached.

P.E.I.'s legislation recognizes the possibility of such a stalemate, particularly with regard to the final step of negotiating the wage adjustments. It specifically states that the employer shall jointly negotiate with all bargaining agents and employee representatives, except for the wage adjustments, which must be negotiated separately. New Brunswick's Inter-departmental Report has also recommended that its government include a similar provision when drafting its legislation.

Ontario's situation is quite different given its requirement that a separate pay equity plan be developed for each bargaining unit, and that cross-bargaining unit plans only be permitted if there are insufficient gender-dominated classes for comparative purposes within a single unit. Therefore, in Ontario, which parties negotiate and with whom will depend on the occupational groupings within an organization.

6) Should the negotiation of pay equity be separate from the regular collective bargaining process?

In each province, the intention was for this process to function separately and apart from normal collective bargaining. P.E.I.'s and Nova Scotia's Acts include specific sections to this effect. It should be noted that any provision requiring that pay equity should be part of the normative collective bargaining process would probably exclude all non-unionized employees (unless the non-unionized employees' salaries are tied to the unionized ones).

7) What effect is pay equity to have on normal collective bargaining?

Pay equity legislation in Ontario, P.E.I. and Nova Scotia includes a clause specifically stating that any pay equity agreement reached under its Act "prevails over other collective agreements". Ontario and P.E.I. also add that the provisions contained in the pay equity agreement(s) shall be incorporated into existing and future collective agreements.

In Manitoba, The Pay Equity Act does not contain such a proviso. This raises the question of whether the relationship of a pay equity agreement to regular collective agreements should be addressed, either through a guideline or legislation, and if so, what might be the most appropriate approach for the parties affected? Note: the provision of allowable exceptions provides the parties with some flexibility to address some issues related to future collective bargaining, such as labour market shortages. Another allowable exception, specifically provided for in Ontario's Act, is that of bargaining strength (see section on allowable exceptions).

H. DETERMINING VALUE AND JOB EVALUATION PROCESS

Job evaluation involves a process of comparing jobs to determine the relative position of one job to another in a wage or salary hierarchy within an organization. Job evaluation is concerned with the content of jobs, not with individual performance or the abilities of particular workers. Job evaluation is a completely separate and distinct process from "performance appraisal".

Every employer who pays wages of differing levels has some form of job evaluation, ranging from, the employer's "gut feeling" as to the worth of the tasks being performed, to a formal and systematic job evaluation system, to market surveys, or any combination thereof. It is the use of formal and systematic comparison procedures that is usually referred to as "job evaluation", particularly for the purposes of pay equity.

Various types of the more "formal" job evaluation systems have evolved over time. Some of the methods are qualitative (e.g.ranking, job classification or grade description) while others are quantitative (e.g. point rating, factor comparison). See Appendix D for descriptions of these methods. Despite the existence of these job evaluation systems for more than forty years, gender-based pay inequities continue to exist. The reason for this is that most employers have not had to think of factoring in the concept of pay equity either into their system or that system's application, until quite recently.

Most pay equity initiatives, particularly government legislated ones, have taken the view that job evaluation is a technique that can be used to detect gender-based discrimination in wage setting practices. For instance, when a equal pay for work of equal value complaint is filed against an employer who may not have an appropriate job evaluation system in place, the Canadian Human Rights Commission uses an existing prepackaged plan to assess the validity of the complaint.[27] In fact many, including Manitoba, have taken the position that without job evaluation it would be very difficult a) to determine accurately whether gender-dominated jobs of equal or comparable value are being paid equitably, and b) to measure the degree of any possible pay discrepancies.

All recent pay equity legislation in Canada provides "either implicitly or explicitly" that a gender-neutral job evaluation system be applied in the comparison of gender-dominated job classes.[28] No jurisdiction recommends that a particular or universal job evaluation system be used. But most specifically require that the job evaluation method be:

i) a single system, i.e. only one plan to apply across an organization (unlike Ontario's Act which could result in a different job evaluation system for each bargaining unit and another for non-unionized employees);

ii) a gender-neutral system;

iii) a system that uses a composite of the criterion of the skill, effort, and responsibility required to perform the work, and the working conditions under which the work is performed (Note: requiring the application of these four factors in a pay equity exercise implies the use of a quantitative job evaluation system); and

iv) used only to evaluate the gender-dominated job classes in an organization.

The application of both a job evaluation approach and the criterion above to the implementation of pay equity, may have different implications for and prompt different responses from employers and employees.

Concerns About Using Job Evaluation

Skepticism is often expressed as to whether using a job evaluation system, per se, will be able to adequately detect gender-based discrimination in compensation practices.[29] Can any system really

be gender-neutral enough? Obviously, any process that seeks to determine the value or worth of a job involves judgement; and judgement in turn implies bias. What most of the recent Acts seek to do is to incorporate certain criteria, such as those listed above, that minimize subjectivity as much as is possible. Although no system is likely to be "pay equity perfect", a gender-neutral application of a quantitative, gender-neutral job evaluation system might come closer than many existing methods have to date. That is why joint labour-management negotiation of an appropriate job evaluation system is also often recommended, to draw more broadly on a range of knowledge, expertise and perspectives.

Nonetheless, this discussion paper does not suggest that job evaluation is the only method by which pay equity can be implemented or achieved. During the Ontario consultations a number of different mechanisms were proposed, such as equalizing the base (or entry level) rates between certain male and female-dominated job classes; reducing or eliminating the number of steps in the pay grades of female-dominated job classes as compared to male-dominated ones; across the board wage settlements instead of percentage based increases; or integrating the pay lines between the gender-dominated job classes to determine the base, mid-point and maximum wage rates and then applying a formula to arrive at the adjustments.[30]

The point that this discussion paper does wish to make is that job evaluation, as a tool, (if designed and applied in a gender-neutral manner) may enable parties to determine both the existence of any gender-based pay discrepancies and more accurately measure the degree of those discrepancies; which in turn could assist in determining the size of any necessary wage adjustments.

Single System

One contributing factor as to why job evaluation methods have not been effective in the past in addressing gender-based pay inequities, is that most employers using job evaluation have utilized a separate plan for different occupational categories, such as clerical jobs, manual labour jobs and managerial jobs. As a result, the job "factors" used may differ between categories of workers. The factors could also be weighted or valued differently. Such an approach makes it impossible to compare the relative contributions made by gender-segregated occupational groups.

One example of this multiple plan problem occurred in the American Telephone & Telegraph Company (AT&T), where different schemes were used for non-managerial and managerial employees. The managerial scheme gave a high point value to customer contact for managerial (male-dominated) jobs, but almost no points for customer contact for non-managerial (female-dominated) jobs. In fact, the company randomly screened telephone calls to assess the quality of assistance operators gave to customers. Clearly AT&T valued positive customer contact, but it was not consistent in its approach to evaluating the job contributions of female-dominated and male-dominated groups. Given that applying different job evaluation systems to different occupational groupings (which tend to be gender-dominated) is not an uncommon practice, the issue of establishments with multiple plans needs to be addressed vis-a-vis implementing pay equity.[31]

Gender-Neutral System

Gender neutrality requires that whatever an organization regards as a valuable job contribution, it should be so regardless of the gender of the employee making the contribution. The concept of gender neutrality is, as pointed out earlier, relatively new to job evaluation methodologies. It is, however, critical to the whole

point of pay equity. The recent increase in pay equity initiatives, particularly across Canada, has also been paralleled by an increase in research on the issue, including how to reduce gender bias both in job evaluation systems and in their application. It is not the intent of this paper to go into any further detail regarding gender bias in job descriptions, defining of job factors, assigning of points, etc.

Further information on these and other elements in the process can be found in three Bureau publications: Job Evaluation, Job Analysis, and Interpretation and Wage Adjustments. Other sources are noted in the bibliography.

Other Issues

Some of the other issues relating to job evaluation systems need to be addressed as the extension of pay equity is considered:

1) The practicality of applying a job evaluation system in a small organization or business.

   It would be helpful for the government to develop an understanding, through these consultations, of the types of systems/measures that Manitoba employers currently have in place, such as:

   - job descriptions, e.g. for what proportion of employees, for some groups of employees and not others?;
   - job evaluation system(s), e.g. if any, what type, applying to what proportion of employees, to some job groups and not others?;

- the role or input of employees in any of the above functions, and does the nature and extent of any participation vary on the basis of whether the employees are unionized or not, if so how?; and
- human resource personnel, on a full-time or part-time basis or if not, who performs this function in the organization?

2) The role of employees, particularly in non-unionized establishments, in developing, selecting or modifying a job evaluation system.

Effective job evaluation requires detailed knowledge of jobs and their characteristics, that is why employee participation, in the job description portion at a minimum, is usually recommended. However, job evaluation does involve more and it can be complex at times. The concern is that for the best possible process and result, it is important for bargaining agents and employees to have sufficient expertise in job evaluation.

3) The capacity of job evaluation systems to reflect the market.

Employers often raise the concern that job evaluation systems need to be flexible enough to incorporate market factors. In fact as mentioned earlier, employers will on occasion conduct a salary survey to determine what other organizations are paying all or some groups of their employees and then may decide to base their own pay scales on the findings. One note of caution here is that any historical underpayment of women's work that may exist in 'market-based' salaries may be perpetuated by such an approach in an organization's new compensation system. One alternative approach might be to proceed with a job evaluation system that does not factor in the market, but then raises it within the context of an allowable exception at the end of the process.

I. WAGE ADJUSTMENTS

While the objective of pay equity is to ensure that women working in female-dominated classes are compensated based on the value of their work, the intent is not for the process or the results to be punitive towards employers. Consequently most pay equity implementation efforts involve some parameters regarding the level of pay adjustment that an employer may be required to implement within a given timeframe.

Legislation in Manitoba, Ontario, P.E.I., Nova Scotia and the Yukon; proposed legislation in New Brunswick; and a recently signed agreement between the Newfoundland government and five of its public service unions to begin negotiating pay equity, have all developed a formula for phasing-in the costs of wage adjustments at a level and rate that attempts to balance off the rights and needs of women to receive their pay equity wage adjustments, as quickly as possible, with the cost implications facing employers.

The following is a chronology of how this formula has evolved in these jurisdictions:

- 1985 - Manitoba - Public sector (partial) - No employer is required to allocate more than 1% of total payroll each year for a period of 4 years for pay equity wage adjustments.

- 1987 - Ontario - Public sector - No employer is required to allocate more than 1% of total payroll each year, but the adjustments must be fully implemented within 7 years of when the Act comes into force.

- Private sector - Same as above, 1% of total payroll a year until such a time as pay equity is achieved.

- 1987 - Yukon - Public sector - No employer is required to allocate more than 1% of total wages each year until the "wage-gender gap is eliminated".

- 1988 - P.E.I. - Public sector - No employer is required to allocate more than 1% of total payroll each year until pay equity is achieved. However, if in the final year the amount that remains to be paid to achieve pay equity is less than 1% of total payroll, then that amount can be combined with the adjustments paid out in the preceding year.

- 1988 - Nova Scotia - Public sector (partial) - Wage adjustments must be fully implemented within 4 years, no provision specifying the annual level of adjustments.

- 1988 - New Brunswick - Public service/sector (partial) - Have recommended the same formula as in Manitoba, 1% a year of payroll for four years, but if pay equity has not been achieved at the end of the four years the time period should be extended.

- 1988 - Newfoundland - Public service (partial) - The employer will not be required to allocate more than 1% of total payroll each year for four years, and any outstanding amount to be paid to achieve pay equity will be adjusted in the fifth year.

It is interesting to note that all of the above formulas have been incorporated as elements of pro-active pay equity initiatives (except for the Yukon). This is notably different from the approach taken under complaint-based initiatives in Quebec and federal legislation. The experience at the federal level has been that instead of pay equity adjustments being phased-in, they are often retroactive, and result in significant and immediate lump sum payments by the employer, as well as adjustments to their compensation schedules.

One rationale for this distinction in approaches is the combination of timing provisions and the expectations accompanying each model. For instance, the federal equal pay for work of equal value provision passed by Parliament in 1978 states that no employer shall maintain gender-based discriminatory pay practices. If the failure of some federal employers to take corrective action to eliminate any such practices results in one or more complaints being filed, then it is justifiable to order the employer to pay large, lump-sum retroactive adjustments in the light of their failure to act in advance of the complaint(s). In a pro-active based model, given that the onus on the employer to comply is clearly stated, implementation steps and timeframes that the employer is required to follow are enumerated, then it is only fair that those employers be given a reasonable timeframe and rate for implementing pay adjustments.

No jurisdiction permits the wages and/or the wage schedule of any employee to be lowered in order to implement pay equity.

J. ADMINISTRATIVE, MONITORING, ENFORCEMENT AND MAINTENANCE MECHANISMS

All jurisdictions have recognized the need to establish an administrative agency, and in some cases an adjudicative body as well. The accompanying processes, such as monitoring, enforcement, and maintenance that have been evolved are directly related to the model and scope of the various pay equity initiatives.

When Ontario's consultation document, the Green Paper on Pay Equity, was released in November of 1985, Manitoba's pro-active pay equity legislation was the only one in existence. Since then, three additional pro-active bills have come into effect, as well as the unique provisions contained in the Yukon Human Rights Act and New Brunswick's report.

The most complex of these has been Ontario's which extends pay equity to the private sector. This section considers the 'implementation' issues of:

- administering;
- monitoring;
- enforcing; and
- maintaining the objectives of pay equity legislation.

Due to the inter-related nature of these elements, and in an effort to present them clearly and coherently, these issues are reviewed on a jurisdictional basis.

Manitoba

In Manitoba, the responsibility of administering The Pay Equity Act lies with the Pay Equity Bureau and its executive director. The role of the executive director is to assist the parties with implementation, facilitate outstanding matters, monitor implementation, and if necessary refer any unresolved matters to the Manitoba Labour Board, or to an arbitrator in the case of the civil service. The legislation also gives the Bureau a general education, information and research function. As well, the executive director is required to submit a report annually to the Legislative Assembly through the Minister responsible for the Act.

Since its establishment three years ago, the Bureau's primary role has been to provide support to the parties required to implement pay equity, e.g. interpretations of the Act, seminars on issues such as wage and salary administration, etc. While representatives of the employers and employees are responsible for negotiating and implementing pay equity in their organizations, the Bureau is responsible for ensuring that the Act is complied with. One mechanism that formally enables the Bureau to monitor is the legislated deadlines by which the parties must a) endeavour to reach

agreement on the two implementation phases, and b) file their respective agreement reports with the executive director. Another mechanism is the ongoing authority of the Bureau's executive director to request any relevant information or reports from the parties regarding pay equity implementation. While detailed information is formally requested, there has also been an attempt to ensure ongoing contact and dialogue with the entities, particularly through the pay equity officer. The role of the pay equity officer has served as another 'monitoring mechanism' for the Bureau.

The enforcement role of the Bureau through the executive director is limited to referring specific matters, to the Labour Board or to arbitration. This could happen if:

i) the parties fail to file their agreements by the date(s) required;
ii) the parties do not comply with the executive director's request for information; or
iii) the employer does not implement the wage adjustments (a bargaining agent and an employee representative can also refer this particular matter).

Once a report is filed, signifying that agreement has been reached between the parties, it is deemed to be binding or "approved". Given that the pay equity agreements cover an entire entity and that all employees, including non-unionized ones, have representation in the process, the pay equity agreements are approached in the same manner as other negotiated agreements -- hence no complaint mechanism was provided. Although the Bureau subsequently analyzes the reports, it cannot overturn a legal agreement. This is where the Bureau's ongoing relationship with the entities throughout implementation is important in identifying any such concerns that either the Bureau or the parties may have. However, the Bureau's capacity to play such a role depends on its resources relative to the number of entities being monitored and whether the parties choose to accept the

Bureau's point of view. If the executive director believes that an entity has not adequately met the terms of the legislation, that point can be made in the Bureau's annual report to the Minister, who in turn tables it in the Legislative Assembly where it becomes public information.

However, if an agreement is not reached and filed with the Bureau by the specified deadline, then the Bureau or any one of the parties may refer the matter to the Labour Board or to arbitration. Such a referral does not need to occur automatically upon a deadline not being met, as the parties could still be negotiating in good faith, the final details of an agreement.

Once a matter is referred to the Labour Board or to an arbitrator, then normative processes apply. Two additional provisions in the Act related to this process should be mentioned:

i) Subsection 10(9) spells out under what circumstances an arbitrator may order retroactive wage adjustments; and
ii) the executive director is required to prepare a report regarding any matter referred to the labour Board, Section 15(6).

As of the writing of this discussion paper, no referral to either mechanism has been made.

In terms of an ongoing mechanism to ensure that pay equity is maintained once implementation under the Act is completed (including the minimum four year wage adjustment period), there are several provisions in The Pay Equity Act that might facilitate this.

The executive director has:

a) authority to monitor the progress of pay equity implementation;
b) authority to request information from an employer or pay equity officer (whereby the executive director can file a complaint with the Labour Board if the information is not provided); and
c) a duty to submit a report to the Minister, at least once a year, on the progress of pay equity implementation.

This authority is not restricted to the six year implementation period.

Nova Scotia

Nova Scotia's Act which covers most of the public sector, takes a different approach from Manitoba's by providing for the creation of a Pay Equity Commission, whose members are to be appointed by Cabinet from representatives of management and labour. The Commission's responsibilities, which are to be supported by public service staff, include advising the parties, developing educational materials, monitoring, as well as determining the manner in which non-unionized employee representatives are to be selected.

The Nova Scotia legislation outlines clearly the seriousness of the Commission's monitoring role by specifically requiring an employer to submit a report on the progress of implementation to the Commission at least once every month. Also, anyone representing an employee may submit a report on the progress of pay equity to the Commission at any time. This is in addition to the agreement that must be filed by the employer following each of the implementation steps. The Commission itself must forward such a report to the Minister at least twice a year, who in turn is required to table it in the House of Assembly.

The Commission is also vested with an enforcement role that is quite strongly delineated in the legislation. For instance, if the parties fail to reach agreement on a single gender-neutral job evaluation system within the provided for timeframe (6 months), the Commission shall make a determination within 2 months that will constitute "an agreement". Another provision empowers the Commission to "complete the application of the evaluation system within the required time" if in the opinion of the Commission the parties are not applying the evaluation system "in a timely fashion". The Act also permits the Commission to summon witnesses, require the provision of information, administer oaths, and "issue orders or directions to ensure compliance". Finally, if the parties do not agree on the quantum, allocation or implementation of wage adjustments within the specified time, then again the Commission shall decide within a further two months. It is interesting to note, that after these very strict provisions, the Act does not specifically refer to a employer potentially not implementing the wage adjustments, and what the Commission's role might be in that regard. The Commission members serve as the final authority in resolving any outstanding matters between the parties.

As in Manitoba, any agreement reached between the parties is binding, and no complaint mechanism is provided. However, in Nova Scotia any employer or employee to whom the agreement may apply can review and/or receive a copy of the agreement.

In terms of maintaining pay equity, the Nova Scotia legislation specifies that an agreement on pay equity is to take precedence over any provisions in other agreements, as they may pertain to pay equity. As well, the Commission's role of monitoring and reporting on pay equity may not be limited to the six year implementation period.

Prince Edward Island

Prince Edward Island, whose legislation applies only to the public sector, has incorporated a pro-active approach. P.E.I. however has chosen, similar to Nova Scotia, to have its Pay Equity Bureau undertake the role of monitoring, assisting and educating the parties, and that of investigating and adjudicating complaints. The difference here is that the Bureau is to be staffed solely by civil servants. The Bureau is headed by a Commissioner of Pay Equity and is to have staff, including "pay equity officers" whose duties are to "initiate and oversee the negotiations required" between the parties. P.E.I.'s use of the term "pay equity officer" should not be confused with the one in Manitoba's Act, where although the officers are also to "initiate and oversee" implementation they are employees within the various entities, not staff of the Pay Equity Bureau.

In addition to the role of the P.E.I. pay equity officers to initiate and oversee efforts between the parties, the parties are also required to file with the Bureau the agreements they reach on the various implementation steps. The Bureau is required to submit its report at least once every six months to the Minister, who is equally obliged to table it before the Legislative Assembly.

The Bureau is also responsible for "receiving and processing complaints". The circumstances under which complaints can be filed are as follows:

A) During the implementation period but prior to the achievement of pay equity (i.e. once the wage adjustments necessary have been completed):

* A complaint can be filed by:
  - an employer, and
  - an "appropriate bargaining agent" (which includes representatives of non-unionized employees specifically selected for this process, but not individual employees);

* Against:
  - same as above; and

* For reasons that include, failing to:
  - negotiate an agreement in good faith,
  - implement wage adjustments;
  - select and/or apply an appropriate job evaluation system; or
  - any other contravention of the Act or an order of the Commissioner.

B) After pay equity has been achieved:

* A complaint can be filed by:
  - an appropriate bargaining agent, or
  - any employee

* Against:
  - an employer

* For the following reasons:
  - "engaged in a discriminatory practice"; or
  - "failed to maintain pay equity".

The Bureau's enforcement powers are quite broad including summoning witnesses, requiring documents, administering oaths, entering workplaces, and issuing "orders or directions to ensure compliance" with the Act. And the Commissioner in particular when dealing with

complaints, can issue such an order as s/he considers appropriate under the Act, and which has the force equivalent to that of an order of the Supreme Court.

However, in the case of parties who cannot reach agreement, the Commissioner is required to refer the matter to an arbitration board, under the Labour Act. P.E.I.'s Pay Equity Act specifies the type of determinations that an arbitration board can make (Section 16), including a provision for retroactive wage adjustments. Any settlement by an arbitration board is deemed to be binding.

The provisions for maintaining pay equity are relatively comprehensive: a) filing a complaint with the Commissioner; and b) a pay equity agreement is to prevail over any collective agreement and its provisions are to be incorporated into any existing or future collective agreements.

Ontario

In Ontario, where both the public and private sectors are covered under an integrated (pro-active and complaint-based) legislated model, a Pay Equity Commission has been established comprising two units: a Pay Equity Office and a Pay Equity Hearings Tribunal. The Pay Equity Office is responsible for ensuring implementation of the Act; providing assistance to the parties; producing educational material; providing support services to the Hearings Tribunal; enforcement of the Tribunal orders; and submitting an annual report to the Minister of Labour. One of the office's duties, specifically named in the Act, is conducting a study on sectors in the economy which have predominantly female establishments with no appropriate male job classes for comparison. The report and recommendations are to be completed within 1 year of the Act coming into effect -- hence, January 1, 1989. The Pay Equity Hearings Tribunal, comprising

government appointed labour and management representatives, is authorized to review, hold hearings and render decisions on any complaints that might be filed; its decisions are final. Both units are staffed by public servants.

Unlike other jurisdictions, Ontario does not require that pay equity plans, once finalized or agreed to, be filed with the Commission, either as a monitoring mechanism for the Commission or for approval. Instead, the Act provides the following mechanisms that enable the Commission to monitor implementation efforts and progress: review officers; notification of no agreement reached; and objections/complaints.

Review officers are staff of the Pay Equity Office. Through them much of the Commission's monitoring and enforcement functions are to flow. The duties of review officers outlined in the Act include: monitoring the preparation and implementation of pay equity plans; investigating objections and complaints; attempting to effect settlements; the making of orders, in certain circumstances; referring matters to the Hearings Tribunal; the authority to visit workplaces, request documents, question persons, and if necessary seek out and use search and entry warrants; and under certain conditions develop a pay equity plan on behalf of an employer and bargaining agents. It is unclear, at this point, given the breadth of Ontario's legislation how much time review officers will have to initiate pro-actively any monitoring of the development of pay equity plans. In part this will be determined by the extent of the office's resources.

The other mechanism that activates monitoring is the notification of the Commission when agreement cannot be reached (notification also overlaps the right to "object"). Where bargaining agents are involved, agreement needs to be reached on a number of issues, e.g. the gender-neutral "comparison system", determination of gender-dominated job classes, potential expansion of the establishment's

boundaries, and the pay equity plan. In cases of employees who are not in a bargaining unit, agreement needs to be reached on the pay equity plan which has been developed and posted by the employer. In either case, the employer is required to notify the Commission of the failure to reach agreement, and an investigation is undertaken by a review officer who tries to effect a settlement and agreement. If this is after the compensation date, retroactive adjustments shall be made. If a resolution cannot be reached then the review officer "shall" "by order" decide the matter. If an employer, bargaining agent(s) or employee(s) disagree with the order they can file an objection with the Commission, and the matter will be the subject of a hearing before the Hearings Tribunal. The Tribunal's decisions are final.

There is a need to distinguish between an objection and a complaint under the legislation. An objection is a way of raising any concern(s) within the process of trying to arrive at a finalized agreement. Although it appears that a complaint can also be filed during the process of developing a plan, as well as after one is finalized, the circumstances allowing for a complaint seem to be of a more broad, serious, and enforcement-related nature. For instance, any of the parties (including third party representatives for non-unionized employees) may file a complaint with Commission citing a contravention of the legislation, regulations or an order of the Commission. Other situations warranting a complaint by employees or their representatives, specified in the Act, include when a "plan is not being implemented according to its terms", and when a plan is no longer appropriate for a female job class due to a change in circumstances in the establishment.

Once a complaint is received, it is processed in a manner similar to that for objections, except that with a complaint, a review officer can also decide to dismiss it or to refer the matter to the Hearings Tribunal for a hearing. The scope of the Tribunal's decisions and

orders is broad. It includes ordering a review officer to prepare a pay equity plan for an establishment, the costs of which must then be paid by the employer, and if any, the bargaining agents. Section 25 of Ontario's Act provides strong enforcement to the Hearings Tribunal. The legislation also includes fines, $2,000 in the case of an individual and $25,000 in any other case, for every person who is found guilty and convicted of a) hindering or obstructing a review officer or an order of the Tribunal; and b) intimidating, coercing, dismissing, anyone whose actions or behaviour were directed at compliance with the Act.

Obviously the above enforcement mechanisms, coupled with the provision that any pay equity agreement shall prevail overall other relevant agreements, and that its wage adjustments shall be incorporated into existing and future collective agreements, provide relatively strong measures for the maintenance of pay equity. However, the capacity of non-unionized employees to effectively trigger these mechanisms to protect their pay equity gains, remains to be determined.

Future Considerations

As the government's agency to oversee the implementation of pay equity, the Bureau would appreciate information on the nature and extent of the assistance that any parties would like to receive and anticipate needing from the Bureau, particularly vis-a-vis their own existing resources. For instance, would the development by the Bureau of a generic gender-neutral job evaluation system, that would meet the tests of the legislation, be beneficial to the parties, particularly those in smaller establishments with fewer internal resources, as well as limited resources for hiring outside consultants?

If a complaint-type mechanism is considered for any pay equity extension initiatives, then thought would also have to be given to the Bureau's role in that regard.

K. REGULATIONS

All four provinces with pro-active pay equity provide for regulations in their legislation. The Acts vary as to whether they enumerate within a 'regulations section' the matters that could potentially be prescribed through regulations; integrate the references to regulations throughout the Act in the relevant sections; or both. Some of the areas that the jurisdictions anticipated might require clarification, elaboration or revision include:

- forms and notices to be used by the parties (Ontario);
- content and format of reports filed (Manitoba, Nova Scotia);
- methods for determining historical incumbency of a job class (Ontario, P.E.I.);
- further defining gender-dominated job classes (Manitoba);
- a definition of any word or expression in the legislation (Nova Scotia);
- the method of valuing any form of compensation (Ontario);
- procedures for the election of "employee representatives", and any related complaints (Manitoba);
- the designation of any outstanding external agency, board, commission, corporation, etc. (all jurisdictions), and deletion of any currently under the legislation (Nova Scotia);
- permission for the Hearings Tribunal, upon application by an employer and "in accordance with such criteria as may be prescribed in the regulations", to the change the "mandatory" date for posting pay equity plan(s), to revise the dates for wage adjustments to later dates than those specified in the Act, and to modify the "minimum adjustments in compensation required" (Ontario).

No regulations have been enacted in any of the jurisdictions. In the fall of 1986, Manitoba distributed guidelines regarding: bargaining agents being consulted as to the designation of pay equity officers; a process for notifying non-unionized employees of their right to representation, while leaving the election process up to the parties; and the inclusion of predominantly male and predominantly female job classes with 1-9 incumbents.

Ontario, whose Act has only been in effect since January 1, 1988, began issuing in March its series of implementation guidelines on a broad range of issues to assist the parties towards a "self-managed process". Neither Nova Scotia nor P.E.I., have proposed any regulations for their new legislation.

L. SCOPE

Consideration of pay equity beyond the current entities would be incomplete without addressing the scope of any such potential efforts.

The scope or application of any pay equity initiative can either be universal or provide for certain exemptions. As was outlined earlier in this paper, all pro-active pay equity legislation in Canada exempts some employers from its coverage. Only Quebec and federal legislation applies to all workplaces within their respective jurisdictions, however their approach is complaint-based; even the Yukon, which shares the same model, did not include the private sector under its Act.

The inclusion or exclusion of certain categories of employers can be based on various criteria:

1) Public versus Private Sector

2) "Sub-Sectoral" Groups

For example, public sector - school divisions, municipalities, and private sector - by industrial sector, e.g. manufacturing, trade and commerce.

Such an approach might prompt a joint industry-wide effort. This is in fact what the Equal Pay Unit of Labour Canada tries to encourage when it approaches employers.

3) Relationship to and Level of Funding from Provincial Government

"Broader public sector" is often determined by the relationship between government and agencies, either through funding or through the purchase of goods and services (Ontario includes some employers in this latter category).

4) The Size of an Establishment

This is usually based on the number of employees. Therefore defining who constitutes an "employee" is central in determining scope in this regard. Ontario has applied this criterion in terms of which private sector employers are or are not covered by their Act and the timing or effective date of that inclusion. Although not specified in its Act, the Manitoba government chose to include 23 health care facilities on the basis of size. The Canadian Human Rights Commission has also recommended that any legislated pro-active effort at the federal level should be limited to those employers with 100 or more employees.

5) Sectors in which Women are Primarily Employed

This can be one approach to targetting implementation efforts, particularly in the private sector. For example, approximately 47% of women working in the private sector are employed in the community, business and personal service sector.

6) Unionized versus Non-Unionized

The application of pay equity to unionized establishments might facilitate continued use of a negotiated process. However, most women work in non-unionized establishments and therefore would not be covered, potentially exacerbating the wage gap.

Reasons for Exemptions

The most common (practical) reason given for exempting certain employers from pay equity initiatives is resources: human, organizational and financial. This concern was raised during the Ontario consultations particularly with regard to small and medium-sized business. Many employers and employer organizations, made the point that most small and medium-sized employers (and possibly some larger ones too) do not have job evaluation plans in place; may not have the personnel expertise or resources to develop or adopt a job evaluation system; and may not be able to afford to hire a consultant. Others felt that requiring the application of a job evaluation system to a smaller establishment would be impractical, since job duties between positions are often fluid. Many were concerned about the capacity of small businesses to remain competitive and to maintain their profit margins. As well, some predicted that the costs per employee to implement pay equity could be disproportionately higher for smaller employers.[32] Many of these concerns may apply equally to non-profit organizations, a number of whom fall within Manitoba's definition of an external agency.

During the Ontario hearings, a number of presentations stated the opposing case that exempting small businesses will exclude the many women who work in those smaller workplaces, where their wages already tend to be lower on average. One employer group felt that exempting small businesses would give them an unfair competitive advantage since they would not be required to pay the higher labour costs stemming from pay equity.[33]

A number of suggestions were offered as to how the resource requirements in small establishments might be eased, including: having associations of small establishments come together to pool resources and efforts, and centralizing the development of simpler methods of job evaluation that organizations could access.[34]

This debate around small establishments in Manitoba is crucial vis-a-vis developing effect implementation methods. More than half of Manitoba's private sector employers, or about 32,000 firms, have fewer than 50 employees. The Manitoba government would appreciate suggestions directed at developing a workable pay equity model for smaller organizations, as well as examples of any successful applications of job evaluation plans in these entities.

M. BENEFITS AND COSTS OF PAY EQUITY

There are costs and benefits involved in implementing pay equity, which vary depending on the implementation model selected. The objective of pay equity is to eliminate gender-based discrimination in the setting of wages thus narrowing the wage gap between women and men. Therefore, it is women, particularly those in predominantly female occupations, who are the prime beneficiaries of pay equity initiatives. Although the costs of pay equity implementation for the employer can be passed on through either an increase in the price of goods and services or in taxes, there may be negative implications from an attempt to do so. Although it would not be unusual to view

pay equity as an issue that solely benefits women and/or solely costs employers, there is a need to consider a broader range of direct and indirect costs and benefits for both women and employers.

The two types of direct costs involved in implementation are: i) wage adjustment; and ii) administrative. As discussed earlier in the paper, pro-active models include phased-in and for the most part contained provisions for implementing pay equity wage adjustments, whereas complaint-based wage settlements have tended to be lump-sum and retroactive. The composition of an establishment's workforce is a factor in terms of the wage adjustment costs. For instance, the majority of employees in some of the larger municipalities in Manitoba work in male-dominated occupations, such as public works employees, police officers and transit workers. Therefore potential wage adjustment costs for these municipalities could be proportionately smaller than for a sector that has a higher proportion of female employees, such as health. The same analysis might apply among the different industrial sectors, where approximately 6% of women work in the primary sector (forestry, mining, etc.), as compared to 46% of women working are in the finance, insurance and real estate sector.

Administrative costs can also vary depending on the level of in-house expertise; the systems already in place; the complexity and number of job classes; access to outside resources; and/or the option and willingness to combine efforts with other employers or bargaining agents.

Given all these variables it might not be possible to accurately anticipate the costs that particular employers might have. Nonetheless, employers have concerns regarding any increase in costs. Some of the implications of higher labour costs that they have predicted are:

- the laying-off or hiring of fewer workers, possibly replacing some of this labour with technology (e.g. word processors for all staff to input their own work);

- a decrease in profits, that in turn can lead to less investment, growth, employment and business expansion, and government tax revenue; and

- an increase in prices might cause a reduction in the quantity of goods and services purchased, which then could affect output and employment.

There are also those who take the perspective that pay equity benefits both women and employers because:

- if the employees feel they are being treated more fairly then their productivity might improve;

- improved wages might reduce turnover and the resulting recruitment and training costs;

- higher wages will give women more purchasing power thereby stimulating the economy and employment through their increased consumption of goods and services; and

- resulting higher family incomes will lessen the dependence on government while adding to its tax base.

One of the key challenges associated with pay equity implementation is attempting to balance these varying needs and concerns.

CONCLUSION

This discussion paper was developed to provide a framework within which participants in the consultations process can better understand the intricacies of pay equity. Many jurisdictions have struggled with the applicability of these issues to their particular environment. While each jurisdiction differs in its implementation approach, each one gains from the experience of those who have come before.

In Manitoba, we have come full circle. In 1985, we were at the forefront of pay equity legislation in Canada. Legislating only a portion of the public sector has enabled us to proceed in an orderly, considered fashion, and to learn as we go. But it is time to move on. These consultations will ensure reasonable, thoughtful and concrete results.

APPENDIX A

ORGANIZATIONS IMPLEMENTING PAY EQUITY UNDER THE PAY EQUITY ACT

CROWN ENTITIES

A. E. McKenzie Company Ltd.
Alcoholism Foundation of Manitoba
Channel Area Loggers
Communities Economic Development Fund
Leaf Rapids Town Properties
Manitoba Agricultural Credit Corporation
Manitoba Centennial Corporation
Manitoba Crop Insurance Corporation
Manitoba Data Services
Manitoba Development Corporation
Manitoba Forestry Resources Ltd. (Manfor)
Manitoba Hydro
Manitoba Liquor Control Commission
Manitoba Mineral Resources Ltd.
Manitoba Oil and Gas Corporation
Manitoba Public Insurance Corporation
Manitoba Telephone System
Moose Lake Loggers Limited
Venture Manitoba Tours
Workers Compensation Board

EXTERNAL AGENCIES

Health Care Facilities

Bethesda Hospital
Brandon General Hospital
Churchill Hospital
Concordia Hospital
Deer Lodge Hospital
Dauphin Hospital
Flin Flon Hospital
Grace Hospital
Health Sciences Centre
Manitoba Cancer Foundation
Misericordia Hospital
Morden District Hospital
Morris Hospital
Portage Hospital
Selkirk Hospital
Seven Oaks Hospital
St. Amant Centre
St. Boniface Hospital
Swan River Hospital
The Pas Hospital
Thompson Hospital
Victoria Hospital
Winkler Hospital

Universities

Brandon University
Collège universitaire de St. Boniface
University of Manitoba
University of Winnipeg

APPENDIX B

THE REQUIREMENTS OF THE MANITOBA PAY EQUITY ACT*

Requirements	Legislative Reference	
	Direct	Indirect
1. The purpose of the act is to establish the principle of pay equity in Manitoba and to inform employers, unions and employees, in both the public and private sectors, of the principles and practices of pay equity.	Section 2	
2. Pay Equity is defined as a compensation practice which is based primarily on the value of the work performed, regardless of the gender of the employee. It includes the requirement that no employer shall establish or maintain a difference between the wages paid to male and female employees, who are performing work of equal or comparable value.	Section 1 - definition of "pay equity"	Section 6(2)
3. Value is assessed using the composite of skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed.	Section 6(1)	Section 6(2)
4. No employee's wages can be reduced to implement pay equity.	Section 7(1); 7(2)	
5. Pay equity is mandatory in the Manitoba Civil Service, Crown corporations, and 27 external agencies comprising 23 hospitals and 4 universities. Under the act, the civil service commenced implementation October 1, 1985, while for the other entities the process began as of October 1, 1986. The external agencies are listed in the schedule at the end of the act.	Section 8(1); 13(1); Schedule A	Section 1 - definitions of "Crown entity" and "external agency"; Section 3.

*The Pay Equity Act, S.M. 1985-86, c.21. C.C.S.M. p.13

Requirements	Legislative Reference	
	Direct	Indirect
6. Other external agencies (such as personal care homes) which receive substantial government funding can be required to implement pay equity by regulation. Local governments and school divisions are not covered by the act.	Section 1 - definition of "external agency" Section 18(1); 18(2); 18(3); 18(4); 19(c)	
7. Three features of Manitoba's legislation distinguish it from other existing equal value legislation in Canada: it is pro-active, it makes use of the collective bargaining process, and it calls for the establishment of a Pay Equity Bureau.	Section 8(1); 8(2); 8(3); 13(1); 13(2); 13(3); 5(1)	Section 11; 16; 9(1); 14(1)
8. The pro-active approach obliges the legislated public sector employers to apply a single, gender-neutral, job evaluation system to female-dominated and male-dominated classes of employees in order to compare the value of the work performed. The purpose of the job evaluation process is to identify pay inequities.	Section 9(1); 14(1)	
9. A class is considered gender-dominated if 70% or more of those in a class of 10 or more people are of the same gender. In the case of employers with more than 500 employees, other classes may be considered gender-dominated if negotiated by the bargaining parties involved.	Section 1 - definitions of "female-dominated class" and "male-dominated class"	
10. Through the collective bargaining process required by the act, employees play a vitally important role in the implementation of pay equity. Unions, representatives of non-unionized employees, and the employer are obliged to bargain in good faith, making every reasonable effort to reach agreements respecting this process.	Section 8(2); 8(3); 13(2); 13(3)	Section 1 - definition of "employee representative"

Requirements	Legislative Reference	
	Direct	Indirect
11. A Pay Equity Bureau has been established in Manitoba Labour, managed by an executive director with broad powers to monitor compliance with the legislation. Public sector employers must file reports with the bureau. These reports will be summarized in the executive director's annual report, which is to be tabled by the minister responsible in the legislature. Should the bargaining process break down, the executive director will also have the right to refer unresolved matters to adjudication.	Section 5(1); 5(2); 5(3); 9(2); 14(2); 5(2)(c); 5(4); 10(2); 10(3); 15(2); 15(3)	Section 10(3); 15(3)
12. In addition to these important monitoring and reporting functions, the bureau also has a mandate to provide pay equity information and assistance to employers, employees and bargaining agents, in the public and private sectors.	Section 5(3)(a)	Section 5(2)(a); 2(b)
13. A pay equity commissioner was designated to oversee the day to day details of implementation within the civil service, while the act provides that entities may designate a person as pay equity officer to perform a similar role for those organizations. The pay equity commissioner and any appointed officers are obliged to cooperate with the executive director of the Pay Equity Bureau so that the executive director can effectively monitor progress and provide any needed assistance.	Section 12(1); 12(2); 17(1); 17(2)	
14. The act contains specific deadlines for reaching agreements. In the provincial civil service, implementation began on October 1, 1985. An agreement respecting the development or selection and application of a job evaluation system was to be reached by June 30, 1986. Crowns, designated hospitals and universities began the process October 1986 and had until June 30, 1987 to complete this stage.	Section 8(1); 9(1); 13(1); 14(1)	

Requirements	Legislative Reference	
	Direct	Indirect
15. Once job evaluation is completed, a second round of negotiations deals with the exact allocation and phasing-in of necessary wage adjustments. This second agreement was reached September 30, 1987 by the civil service, while other entities were scheduled for completion by September 30, 1988. Wage adjustments follow completion of this stage.	Section 9(1); 14(1)	
16. Impasses in the civil service could be referred to an arbitration board. Other entities could be referred to the Labour Board for adjudication.	Section 10(1) through to 10(9); 15(1) through to 15(8)	
17. Pay equity wage adjustments may be phased in over 4 years, following completion of the second agreement.	Section 7(3)(b); 9(1); 14(1)	Section 1 - definition of "wages"
18. In any twelve-month period, however, no employer is obliged to allocate more than 1% of the previous year's payroll for pay equity wage adjustments.	Section 7(3)(a)	
19. Although the act makes provision for regulations, to date* no regulations have been enacted.	Section 19	
20. Nothing in this act affects the existing obligations of employers or the rights of employees under the "equal pay for equal work" provisions of The Employment Standards Act.	Section 4(2)	

*November 1988

APPENDIX C

UNIONS AND ASSOCIATIONS INVOLVED IN IMPLEMENTATION OF THE PAY EQUITY ACT

AESES	Association of Employees Supporting Education Services
AMHSSE	Association of Manitoba Hydro Staff and Supervisory Employees
BUFA	Brandon University Faculty Association
CAIMAW	Canadian Association of Industrial Mechanical & Allied Workers
CCSB	L'Association des Professeurs du Collège communautaire de Saint-Boniface
CUSB	L'Association des Professeurs du Collège universitaire de Saint-Boniface
CPU	Canadian Paperworkers Union
CUEW	Canadian Union of Educational Workers
CUPE	Canadian Union of Public Employees
CWC	Communications (and Electrical) Workers of Canada
	Employee Representatives of Manitoba Hydro Professional Engineers
GCIU	Graphic Communication International Union
IATSE	International Alliance of Theatrical Stage Employees
IBEW	International Brotherhood of Electrical Workers
IUOE	International Union of Operating Engineers
IWA	International Woodworkers of America
MAHCP	Manitoba Association of Health Care Professionals
MFCW	Manitoba Food and Commercial Workers
MGEA	Manitoba Government Employees' Association
MONA	Manitoba Organization of Nurses Association
PIPSC	Professional Institute of the Public Service of Canada
PSAC	Public Service Alliance of Canada
SEIU	Service Employees' International Union
TEAM	Telecommunications Employees Association of Manitoba
	University of Manitoba Dental Clinic Staff Association
UMFA	University of Manitoba Faculty Association
	University of Manitoba Police Association
UWFA	University of Winnipeg Faculty Association
UWFA (Collegiate)	University of Winnipeg Faculty Association (Collegiate)

APPENDIX D

TYPES OF JOB EVALUATION SYSTEMS

Some of the recognized methods of comparing jobs are described below:

1. **A ranking system** requires that the jobs in the organization are ranked in order on the basis of their importance to the organization or general difficulty.

2. **A job classification or grade description** approach measures the overall job against a pre-determined scale consisting of several degrees of job worth. Evaluators compare each job against the scale and slot it into the grade which matches its definition most closely.

3. **The factor comparison** method compares jobs by making judgements concerning which jobs contain more of certain compensable factors than others. Key jobs or benchmarks are selected and broken down into their factors. The factors are weighted by percentage or dollar amounts. The other jobs are compared to these benchmarks on a factor-by-factor basis and ranked accordingly. The results are combined and assigned a numerical value.

4. **The point rating** method of job evaluation is the most widely used from of job evaluation. A rating scale is constructed for each factor, which includes a definition of the factor, several defined divisions or degrees for each factor and a point score for each such degree. This system involves breaking jobs down and grading them according to compensable factors and sub-factors. Each job gets a numerical score on each of these factors. The scores are added up to obtain the value of the job. The point-rating system has been used for pay equity purposes in a number of jurisdictions.

5. **The policy capturing** approach is a method of job evaluation which relies heavily on statistical procedures for capturing the job factors which are currently valued by an employer and identifies wage discrimination in the pay policy. The point counts and rankings are generated statistically directly from detailed questionnaires. The final set of factors and weights are then adjusted to remove any wage discrimination in the wage structure.

Although there are several types of job evaluation systems in use, the steps involved are basically the same. Determining what factors and sub-factors will be used in assessing the relative value is generally the first step.

END NOTES

1 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 6-8.

2 Ontario, Green Paper on Pay Equity, Toronto, Ontario, November 1985, p. 17.

3 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 8-9.

4 Under Ontario's Act a "pay equity plan" is a document that outlines various details relevant to the implementation of pay equity within an establishment, e.g. the gender-dominated classes compared, a description of the gender-neutral comparison system used, etc. See Section 13 in Ontario's Pay Equity Act, 1987.

5 This is the only provision in Ontario's legislation regarding the determination of "establishment" that requires the agreement of the non-unionized employees, see Section 15(2)(a).

6 Prince Edward Island, Report of the Committee on Equal Pay For Work of Equal Value - 1987, Charlottetown, P.E.I., February 6, 1987, p. (iii).

7 See Section 15 of Prince Edward Island's Pay Equity Act.

8 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 11-12.

9 Ibid., p. 14.

10 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 46.

11 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, p. 13.

12 Ibid., p. 12.

13 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 46.

14 New Brunswick, Report of the Interdepartmental Committee on Pay Equity, Fredericton, New Brunswick, September 1988, p.6.

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1 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 6-8.

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8 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 11-12.

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10 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 46.

11 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, p. 13.

12 Ibid., p. 12.

13 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 46.

14 New Brunswick, Report of the Interdepartmental Committee on Pay Equity, Fredericton, New Brunswick, September 1988, p.6.

15 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, p. 17.

16 Ibid., pp. 18-19.

17 Ibid., pp. 17-19.

18 Ibid., pp. 15-16.

19 Ibid., p. 37.

20 Canadian Human Rights Commission, "Equal Pay for Work of Equal Value", Interpretation Guide for Section 11 of the Canadian Human Rights Act, Ottawa, Ontario, September 1984.

21 C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, p. 37.

22 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 44.

23 This regulation includes provisions such as the election of worker members to a workplace safety and health committee; parity between the number of employer and worker members on a committee; and distribution and posting of information.

24 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, p. 31.

25 Ibid.

26 Ibid.

27 Ontario, Green Paper on Pay Equity, Toronto, Ontario, November 1985, p. 21.

28 Heather E. Conway, "Equal Pay for Work of Equal Value Legislation in Canada: An Analysis", Ottawa, Ontario, November 1987, p. 22.

29 Lorna Kaufman, "Job Evaluation Systems: Concepts and Issues", Kingston, Ontario, 1986 pp. 24-28.

30 Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, pp. 19-21.

[31] Ronnie J. Steinberg, "Job Evaluation Methodologies and Comparable Worth Policy" (paper presented at a seminar on "New Concepts and Research Directions in Pay Determination", Cornell University, Ithaca, New York, November 8, 1984), p. 10.

[32] C. David Clarke, Gail C. A. Cook and William A. Dimma, Report of the Consultation Panel on Pay Equity, Toronto, Ontario, August 1986, pp. 24-26.

[33] Ibid., p. 25.

[34] Ontario Federation of Labour, Report on the Ontario Government's Public Hearings on Pay Equity, Toronto, Ontario, pp. 3-4.

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GLOSSARY OF TERMS

Affirmative Action: A program that aims to remedy the effects of discriminatory hiring and training practices, and to achieve equitable employment opportunities for designated target groups including women, natives, visible minorities and the physically disabled.

Arbitration: The process by which a board or arbitrator, acting under the authority of legislation, a collective agreement or mutual consent of both parties to a dispute, hears both sides of a controversy and issues an award, which is ordinarily binding on both parties.

Award, Decision or Order: The final decision of an arbitrator, binding on both parties to the dispute.

Bargaining Agent: The exclusive representative of a group of workers or employers in the process of collective bargaining.

Bargain in Good Faith: The requirement that two parties meet and confer with minds open to persuasion with a view to reaching agreement.

Bargaining Unit: A group of employees recognized by the employer and certified by a labour board for the purpose of collective bargaining.

Benchmark Jobs: A representative sampling of jobs covering the spectrum of jobs in an organization. Benchmark jobs can be used as reference points in the design and application of a job evaluation system.

Collective Bargaining: Method of determining wages, hours and other conditions of employment through direct negotiations between the union and employer.

Comparable Worth: The principle that jobs can be compared even though they may be dissimilar in nature but equal or equivalent in terms of skill, effort, responsibility and working conditions. This term is often used in the United States and is synonymous with pay equity in Canada.

Compensation Policy: The standards which an organization uses in making wage and salary compensation decisions.

Complaint-based Model: A method of implementing pay equity which requires an employee(s) to identify an alleged inequity and file a complaint. The complaint is then reviewed and investigated and either confirmed or denied. A confirmed complaint requires correction.

Effort: The measurement of mental and physical application required in a job to adequately perform the assigned tasks.

Employee Representative: A representative of non-unionized employees.

Equal Pay for Equal (or Substantially the Same) Work: The principle that a woman doing the same or substantially the same work as a man in an establishment should receive equal pay.

Equal Pay for Work of Equal Value: The principle of paying equal pay for different jobs in an organization which are determined to contribute the same or comparable value to that organization. A principle which will eliminate gender-based wage discrimination. The terms pay equity or comparable worth can also be used to describe this concept.

Establishment: A term often used in pay equity legislation to define what the "workplace". Manitoba's legislation requires comparison of jobs within an establishment, not outside the establishment.

Factor: A basic component or part of a job evaluation plan which is used to measure characteristics of a job. For pay equity purposes, four factors are measured. They are skill, effort, responsibility and working conditions.

Factor Comparison: A method of job evaluation which compares jobs by making judgments about which jobs contain more of certain compensable factors than others.

Female-dominated Job Class: For pay equity purposes in Manitoba, a job class with 10 or more employees, where 70% or more of the people in the job class are women.

Gender-bias: Any practice or program which incorporates discrimination between men and women, either directly or indirectly.

Gender-dominance: A job class which is occupied predominantly by women, or predominantly by men. According to Manitoba's legislation, a class is gender-dominated if it has 10 or more incumbents, with 70% or more of the same gender.

Gender-neutral: Any practice or program which does not incorporate or allow gender-discrimination between men and women, either directly or indirectly.

Implementation: For pay equity purposes, the carrying out of The Pay Equity Act with implementation complete after wage adjustments have been made.

Increment: The difference between two consecutive pay grades in a wage structure. For example, if pay grade one pays $5.00 per hour and pay grade two pays $5.17 per hour, 17 cents is the increment.

Industry-wide Bargaining: Collective bargaining that takes place on an industry-wide basis; terms and conditions of employment agreed upon cover all or a major portion of the organized employees in the industry.

Integrated Model: A method for implementation of pay equity which incorporates elements of both the complaint-based and pro-active models.

Job Analysis: A systematic collection of the various tasks involved in a job or job class and the minimum requirements needed to perform the job adequately. The process of information gathering.

Job Class: "Class" or "class of positions" means a group of positions involving duties and responsibilities so similar that the same or like qualifications may reasonably be required for, and the same schedule or grade of pay can be reasonably applied to, all positions in the group.

Job Classification: A type of job evaluation whereby the total job is evaluated and is then slotted into a pay grade that has been defined. Each job is placed into the grade where the grade description most closely fits the particular job being evaluated.

Job Description: A written description of the requirements of the job including job duties, tasks, responsibilities and scope.

Job Evaluation: The process of comparing the value of jobs in order to determine the position of one job in relation to another.

Job Evaluation System: For purposes of pay equity, a single, gender-neutral evaluation system capable of measuring skill, effort, responsibility and working conditions.

Job Ghettoization: The concentration of women into low-paying, low status jobs.

Job Specifications: Identification of the amount, level or type of skill, effort, responsibility and working conditions required to perform the duties and responsibilities listed on the job description.

Labour-Management Committee: Any committee having representation from both management and labour. They may discuss such topics as safety and health, training, or job evaluation.

Male-dominated Job Class: For pay equity purposes in Manitoba, a job class with 10 or more employees, where 70% or more of the incumbents in the job class are men.

Manitoba Labour Board: The board, provided for under The Labour Relations Act of Manitoba, which is responsible for certification of trade unions, the inclusion of dispute-settling provisions in collective agreements and investigation of complaints of bad faith in collective bargaining.

Negotiated Process: A means by which representatives of employers and of employees (unionized and/or non-unionized) jointly negotiate the implementation of pay equity. A process which is usually kept separate from any regular collective bargaining process.

Non-traditional Jobs: Occupations which have generally been filled by either women or men to the exclusion of the other.

Occupational Segregation of Women: The concentration of women into a narrow range of occupations, primarily clerical, sales, service and health care.

Pay Equity: The concept of equal pay for work of equal value, based primarily on the relative value of work performed, irrespective of the gender of employees. Manitoba requires that no employer covered by The Pay Equity Act shall establish or maintain a difference between the wages paid to male and female employees, employed by that employer, who are performing work of equal or comparable value.

Point-rating or Point Factor: A method of job evaluation in which a rating scale is constructed for each factor, each factor receives a numerical score, scores are totalled and a job value is established.

Policy capturing: A method of job evaluation which relies heavily on statistical procedures for capturing current pay policies of a company and identifying wage discrimination based on gender. Factors and weightings can then be adjusted to remove the identified wage discrimination.

Pro-active Pay Equity Model: Requires employers to initiate an audit of their pay practices within specific timelines and to identify and correct any pay inequities between male and female-dominated job classes of equal or comparable value. Such an approach may or may not require involvement the representative of employees.

Ranking: A method of job evaluation in which jobs in the organization are ranked in order on the basis of their importance to the organization or general difficulty.

Ratification: Formal approval of a newly negotiated agreement by vote of the union members affected, as well as by employers or employer associations.

Rating Committee: A committee established to objectively determine the value of jobs by applying the job evaluation system to the job content information.

Regression Analysis: Used to test for the impact of an independent variable on the dependent variable while statistically controlling for the effects of other independent variables. For pay equity purposes, it is used to estimate the relationship between point values of evaluated gender-dominated jobs and the pay rates.

Responsibility: Aspects such as accountability or decision making components of the job. Often measures consequence of responsibility such as cost factors, human relations, supervision.

Salary Range: The full progression of increments from starting rate to maximum for a particular job, job class, or pay scale.

Salary or Pay Line: For pay equity purposes, the determination of the female or male salary structure in a workplace. The pay line identifies the general trend of an organization's pay practice as applied to male and female-dominated job classes.

Skill: The level of knowledge or ability required to perform the tasks of the job. Often measured in terms of education, experience and training.

Sub-factor: A further breakdown of identified factors. In job evaluation plans, a factor such as skill could have sub-factors such as education or on-the-job training; effort could be broken down into sub-factors such as physical effort and mental effort.

Systemic Discrimination: Discrimination in employment policies or practices that adversely affects certain groups even though the discrimination may not be overt or intended.

Systematic Undervaluation: A consistent application of bias by either application or design.

Under Representation: Where the number of women participating in a specific type of job is lower than the representation in the general population.

Wages: "Wages" means any form of remuneration payable or benefit provided by an employer for work performed by an individual. "Wage" or "wage rate" has a corresponding meaning.

Wage Gap: The difference between the average wage paid to men and women.

Wage Structure: A systematic and logical arrangement of the compensation of an organization, usually called pay grades.

Weighting: The process of allocating a higher emphasis to one factor than another, so that the factors considered to be of relatively greater importance to an organization, assume greater importance.

Working Conditions: Encompasses the environmental surroundings and also the conditions under which the tasks are performed. These conditions could be either physical or psychological.